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Tuesday, 23 November 2004, 10 a.m.

New York

President:	Mr. Danforth	(United States of America)
Members:	Algeria	Mr. Katti
	Angola	Mr. Lucas
	Benin	Mr. Zinsou
	Brazil	Mr. Valle
	Chile	Mr. Donoso
	China	Mr. Guan Jian
	France	Mr. Duclos
	Germany	Mr. Trautwein
	Pakistan	Mr. Khalid
	Philippines	Mr. Lacanilao
	Romania	Mr. Motoc
	Russian Federation	Mr. Karev
	Spain	Mr. Yáñez-Barnuevo
	United Kingdom of Great Britain and Northern Ireland	Sir Emyr Jones Parry

Agenda

International Tribunal for the Prosecution of Pesons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Letter dated 23 November 2004 from the President of the International Tribunal for the Prosecution of Pesons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addresed to the President of the Security Council (S/2004/897)

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-154A.

04-62120 (E)

Letter dated 19 November 2004 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 addressed to the President of the Security Council (S/2004/921)

The meeting was called to order at 10.10 a.m.

Adoption of the agenda

The agenda was adopted.

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

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The President: I should like to inform the Council that I have received letters from the representatives of Bosnia and Herzegovina, Croatia, Rwanda and Serbia and Montenegro, in which they request to be invited to participate in the discussion of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite those representatives to participate in the discussion without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

On behalf of the Council, I extend a warm welcome to His Excellency Mr. Miomir Žužul, Minister for Foreign Affairs of Croatia, and His Excellency Mr. Zoran Loncar, Minister of Public Administration and Local Self-Government of the Republic of Serbia, on behalf of Serbia and Montenegro.

At the invitation of the President, Mr. Kusljugić (Bosnia and Herzegovina), Mr. Žužul (Croatia), Mr. Ngoga (Rwanda) and Mr. Loncar (Serbia and Montenegro) took the seats reserved for them at the side of the Council Chamber.

The President: I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Judge Theodor Meron, President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

It is so decided.

I invite Judge Meron to take a seat at the Council table.

I shall take it that the Security Council decides to extend an invitation under rule 39 of its provisional rules of procedure to Judge Erik Møse, President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994.

It is so decided.

I invite Judge Møse to take a seat at the Council table.

I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Ms. Carla Del Ponte, Prosecutor of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of

International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

It is so decided.

I invite Prosecutor Del Ponte to take a seat at the Council table.

I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Hassan Bubacar Jallow, Prosecutor of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994.

It is so decided.

I invite Prosecutor Jallow to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Council is meeting in accordance with the understanding reached in its prior consultations.

I should like to draw the attention of the members to photocopies of letters circulated on 18 and 22 November 2004, respectively, from the President of the International Tribunal for the Former Yugoslavia and the President of the International Criminal Tribunal for Rwanda, which will be issued as documents of the Security Council under the symbols S/2004/897 and S/2004/921.

At this meeting, the Security Council will hear briefings by the President and the Prosecutor of the International Tribunal for the Former Yugoslavia and by the President and the Prosecutor of the International Criminal Tribunal for Rwanda. Following those briefings, I will give the floor to Council members who wish to make comments or ask questions.

As there is no list of speakers for the Council members, I would like to invite them to indicate to the secretariat if they wish to take the floor.

I now give the floor to Judge Theodor Meron, President of the International Tribunal for the Former Yugoslavia.

Judge Meron: It is a great honour to address this body in presenting the second report of the President of the International Criminal Tribunal for the Former Yugoslavia (ICTY), pursuant to paragraph 6 of Security Council resolution 1534 (2004). I am particularly pleased, Sir, to speak here today under your presidency.

It has now been slightly more than six months since I delivered to the Council, as specified by resolution 1534 (2004), assessments by me and by the Prosecutor of the Tribunal's progress towards the implementation of the completion strategy.

Let me turn first to the docket statistics. Since its establishment the Tribunal has completed trials in 18 cases involving 36 accused. A further 17 accused have pleaded guilty, three of whom entered pleas mid-trial. The Tribunal's three Trial Chambers continue to operate at full capacity, handling six cases simultaneously. Currently, four trials are being heard. Two other cases are currently in the judgement-writing stage, with the first due to be rendered before the end of December 2004, the second in January 2005. The *Brdjanin* Trial Chamber rendered its judgement on 1 September 2004. The Tribunal has thus completed, or is holding in the first instance, proceedings involving 60 accused in 24 trials and 15 separate guilty-plea proceedings.

While many factors are important in determining the Tribunal's ability to adhere to the schedule detailed in the completion strategy, several factors stand out as particularly important: the Tribunal's ability to refer cases to competent national jurisdictions for trial; improved cooperation with the Tribunal by States in the former Yugoslavia; and a continued focus of Tribunal resources on the most senior-level accused.

First, I will address the issue of the Tribunal's ability to refer cases to competent national jurisdictions for trial. Transferring some of the docket out of The Hague has the potential to reduce the Tribunal's workload in a meaningful way. Accordingly, the adoption of rule 11 bis of the Tribunal's Rules of Procedure and Evidence gave Trial Chambers the power to refer an indictment to the authorities of a State in which the crime was committed, in which the accused was arrested or which has jurisdiction, and which is willing and adequately prepared to accept the case. In determining whether to refer an indictment, a Trial Chamber must consider the gravity of the crimes

charged and the level of responsibility of the accused, in accordance with the Security Council's intention that the Tribunal retain jurisdiction over the highest level defendants and the most serious crimes. Trial Chambers may not, of course, refer cases to jurisdictions in which the accused might not be accorded a fair trial or in which the death penalty is a possible consequence of the trial.

The Prosecutor has already begun to file motions for the transfer of cases to domestic jurisdictions under rule 11 bis. To date, she has filed six motions involving 10 accused, requesting that seven be transferred to the courts of Bosnia and Herzegovina, two to Croatia and one to the State Union of Serbia and Montenegro. A Trial Chamber has been tasked to review those requests for 11 bis transfer, and, when it ultimately deems some or all of those requests to be appropriate, the resulting transfers will be of real assistance in keeping the Tribunal on schedule for compliance with the completion strategy.

Using the 11 bis process to integrate Bosnia and Herzegovina, Croatia and Serbia and Montenegro into the process of bringing offenders to justice will have benefits that go well beyond a reduction of the Tribunal's caseload and promotion of the completion strategy. Involving those national Governments in the process will bring reconciliation and justice to the region, as well as promote the development of a commitment to the rule of law. National courts can play this role, however, only if trials are not used for political purposes and if they meet international standards of due process and fair trial. To that end, other members of the international community have begun lending support to the fledgling Sarajevo tribunal. Substantial additional support is still required, however, as the Security Council recognized in calling for further financial support in paragraph 10 of resolution 1534 (2004).

The States of the former Yugoslavia are in varying stages of readiness to accept transfers of cases from the Tribunal. A special chamber of Bosnia and Herzegovina's State Court will soon be ready to accept transferred cases of lower and intermediate level officials. Officials from the Tribunal have provided substantial support to the Office of the High Representative with respect to creating the special chamber. The Bosnian authorities expect that the chamber will be operational by January 2005, and the Tribunal is prepared to begin transferring appropriate cases as soon as practicable.

The Tribunal is engaged in a number of initiatives designed to expedite the process of preparing for eventual referral of cases from the ICTY to Croatia and to Serbia and Montenegro. For example, the Tribunal organized an extensive programme of six training seminars for Croatian judges and prosecutors who are likely to take part in the trial of war crimes cases. That programme, organized on the initiative of the Minister of Justice of Croatia, consisted of seminars conducted by the Tribunal's officials, held in the late spring and the summer of 2004 and repeated in the autumn. The seminars focused on the jurisprudence of the Tribunal and on international humanitarian law, with the aim of strengthening the familiarity of Croatian judges and prosecutors with those subjects and of improving their ability to try serious violations of international humanitarian law.

During my first official visit to Croatia, in early November 2004, I was impressed by the professionalism of the Supreme Court of Croatia and of the county court in Zagreb. I am optimistic about their growing capability to try war crimes cases according to international human rights and due process standards. I have been advised by the Organization for Security and Cooperation in Europe (OSCE) mission to Croatia, in a letter dated 12 November 2004, that a limited number of transferred cases could likely be dealt with adequately by a limited number of courts in Croatia, but that the transfer of any significant number of cases from the ICTY to Croatia could overburden the Croatian judiciary, given its present capacity.

The Tribunal has also hosted a week-long visit, organized by the United Nations Development Programme, of seven judges from the newly established Department for War Crimes of the Belgrade district court, commonly known as the Special Court for War Crimes. That court is developing important capability. The aim of the visit was to facilitate the transfer of knowledge and experience from the practice of the Tribunal and to establish channels of communication between the Special Court and the Tribunal. Upon the request of the Prosecutor, a Trial Chamber is considering the transfer of one case to Serbia and Montenegro.

A second critical factor affecting the Tribunal's ability to adhere to the completion strategy is the

degree of cooperation from States of the former Yugoslavia. At the moment, there is wide variation in the several States' willingness to cooperate with the Tribunal. While the cooperation of Bosnia and Herzegovina with the Tribunal remains very good in all areas, there is no cooperation on the part of Republika Srpska. There has been no serious effort by the Republika Srpska authorities to locate and arrest fugitives, and the issue of missing and possibly hidden documentation is still not resolved. Croatia's cooperation with the Tribunal is good in all domains except for the arrest of Ante Gotovina, the sole remaining fugitive from justice from Croatia. The need to arrest Gotovina and deliver him up to The Hague continues to be an issue of the highest importance, and one that should have been resolved a long time ago. As for Serbia and Montenegro, despite the recent transfer of Ljubisa Beara and some progress on the granting of waivers for witnesses to be authorized to testify, the ICTY remains gravely concerned over that Government's lack of cooperation, in particular its unwillingness to arrest fugitives. I agree with the Prosecutor that the general cooperation of that State with the Tribunal, especially with regard to taking measures against the intimidation of witnesses and against the pressuring of judges and prosecutors, is particularly important.

Thirdly, the Tribunal will need to continue to follow Security Council resolution 1534 (2004), in paragraph 5 of which the Council called on the Tribunal,

> "in reviewing and confirming any new indictments, to ensure that any such indictments concentrate on the most senior leaders suspected of being most responsible for crimes within the [Tribunal's] jurisdiction".

Rule 28 (a) of the Tribunal's Rules of Procedure and Evidence implements that directive by requiring the Bureau, a body comprising the President and Vice-President of the Tribunal and the presiding judges of the three Trial Chambers, to confirm that every new indictment submitted by the Prosecutor concentrates on one or more of the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the Tribunal. Up to now, the Bureau has determined under rule 28 (a) that recent indictments have all satisfied the seniority criterion.

I turn now to the question of our current standing vis-à-vis the completion strategy schedule. The May 2004 Tribunal estimates suggested that we could still complete the trials of those accused who were in custody or on provisional release at that time, as well as the trial, in all probability, of the fugitive Ante Gotovina, before the close of 2008. But I also reported that if new indictees or current fugitives were to arrive at The Hague and require new and separate trials, it would become increasingly unlikely that all accused within the custody of the Tribunal could be tried by the end of 2008.

Since my last report to the Security Council, one new indictment has been submitted and confirmed: that of Goran Hadzic. He is accused of, inter alia, perpetrating mass murders and mass deportations in his role as President of the Serbian Autonomous District of Slavonia, Baranja and Western Sirmium. He remains at large. Two more additions to the caseload come from the arrests of Ljubisa Beara and Miroslav Bralo, two fugitives who were already under indictment. Beara is accused of playing a leadership role in acts of genocide by the army of Republika Srpska at the Srebrinica enclave. Bralo is accused of perpetrating a series of war crimes including rape, murder and torture while he was a member of the ethnic Croat HVO Jokers in the Lasva valley region of Bosnia and Herzegovina. Both accused have now made their first appearances before the Tribunal.

Those new additions to the Tribunal's docket do not require significant revision of the estimate I presented to the Council in May 2004. At present, we still estimate that — assuming a reasonable rate of granting pending and anticipated 11 bis applications — the Tribunal can complete the trials of all accused currently in custody, including those on provisional release, as well as the trial of Gotovina — provided that he is transferred to The Hague before 2006 and is tried together with Cermak and Markac — before the close of 2008. But any further growth in the trial docket, including the capture of Radovan Karadzic and Ratko Mladic, or the arrest of any of the four Serbian generals indicted in October 2003, would make achievement of the 2008 deadline entirely dependent on the ability to dispose of some pending or future cases other than by a full trial at the Tribunal, whether by guilty pleas or by 11 bis transfers. The new indictments anticipated in the coming weeks, which might result in four new trials, will further diminish the

likelihood of meeting the 2008 deadline if they culminate in new arrivals, either arrests or voluntary surrenders. We do not expect any of these new cases to be appropriate for rule 11 bis referral. There may or may not be the possibility of guilty pleas in these cases, but that is a matter between the accused and the Prosecutor.

This prediction rests, of course, on certain important assumptions. Following the results of the election of permanent judges on 19 November 2004, we can assume that trials pending in November 2005 will continue uninterrupted. However, the Security Council might be required to extend the mandate of one permanent judge for a few months in order to complete his case. Moreover, it is impossible to predict delays related to the health of the accused or counsel or other obstacles to the orderly conduct of trials.

Various factors bear on the Tribunal's future ability to implement the completion strategy successfully. First, it is absolutely essential that the Tribunal have adequate personnel to stay abreast of its steadily increasing workload. But that basic prerequisite for effective and fair adjudication is seriously threatened by the current hiring freeze, which not only limits the Tribunal's ability to take on new staff to meet its increasing workload but also forbids hiring even to replace essential personnel who leave the Tribunal. It is difficult to overstate the danger that this poses to the mission of the Tribunal. Without adequate assistance from legal officers, the time required for the judges of the Tribunal to hear and decide cases will increase dramatically. The current shortage of essential staff throughout the Tribunal may make it impossible to continue courtroom hearings in six trials simultaneously.

I have myself been involved, during the past few months, in attempts to persuade Governments to pay their arrears. These efforts have had considerable success. I wish, at this point, to express my sincere appreciation to the Russian Federation and the United States for having paid in full, in the last few months, their assessments for 2004. This means that all five permanent members of the Council have paid their 2004 dues in full. That is a welcome reflection of a strong political will to see the Tribunal succeed, and it provides a salutary example. The freeze must be lifted without further delay if damage to the credibility of international justice and far greater expenses are to be avoided.

Secondly, the Tribunal must be able to focus its resources on trying the most senior accused suspected of being most responsible for crimes within the Tribunal's jurisdiction within the time frame of the completion strategy. That requires the development of domestic institutions in the States of the former Yugoslavia capable of receiving eligible cases referred under rule 11 bis. The schedule would also be positively affected in the event that additional accused plead guilty. Improved cooperation by Member States and appropriate measures to avoid interruptions due to the expiration of the term of office of ad litem judges in June 2005 would further assist the Tribunal's ability to fulfil the goals of the completion strategy. It should also be mentioned, as I wrote to the Legal Counsel, that it would be helpful for elections of ad litem judges to be held as early as possible in 2005, so as to enable the Tribunal to achieve the most timely and efficient organization of trials possible.

I have addressed some of the difficulties in attempting to meet the Tribunal's completion strategy. While taking those difficulties into account, I wish to make clear that the Tribunal is fully committed to the completion strategy and will not be complacent as it makes every effort to successfully achieve the goals of the strategy.

In this context, the Tribunal has a firm resolve to do its utmost to conclude all trials at the first instance by 2008. I was encouraged by the recognition by members of the General Assembly, when the Assembly took up the ICTY annual report on 15 November 2004, of the measures already taken to increase efficiency and cost-effectiveness at the Tribunal. I should like to inform the Council that the judges have on their agenda additional proposed reforms which, if adopted, would have a real impact on reducing the length of trials while at the same time respecting due process in all respects. I will keep members of the Council and the membership at large informed of the additional measures to be taken.

I have a few concluding words. Despite the vast scope and unprecedented nature of its task, the Tribunal has gone a long way towards achieving the Security Council's goal of ensuring that persons responsible for war crimes, genocide and crimes against humanity must answer for them in public trials that meet the highest standards of international due process. The jurisprudence that the Tribunal has developed in matters of international criminal law and

international criminal procedure has already served as an important resource for other war crimes tribunals established under the aegis of the United Nations and will no doubt provide guidance to the International Criminal Court. Our legacy will include an impressive corpus of decisions on substantive international criminal law, humanitarian law, human rights and, just as important, international criminal procedure and evidence.

As the ICTY progresses through the most active and productive period of its history, it continues to send a powerful message of responsibility and accountability to the former Yugoslavia and throughout the international community. The Tribunal has demonstrated that international prosecutions and trials of war criminals under human rights and due process are possible and credible. The Tribunal is committed to continuing to improve its methods of work, its rules and its procedures. But the completion strategy will not be allowed to compromise due-process rights of the accused or to create an impunity gap.

I repeat my past call and that of my predecessors for each and every Member State to do its full part to assist the work of the Tribunal. Twenty fugitives remain at large and must be arrested. That number includes Radovan Karadzic, Ratko Mladic and Ante Gotovina. In this regard, I urge the Security Council to be mindful of the risks posed to international justice in seeming to allow fugitives the false hope that they can outrun and outlast the Tribunal. With the end of the Tribunal's life cycle in sight, we must together guard against compromising the legacy of justice, the ending of impunity and reconciliation in the former Yugoslavia.

The President: I thank Judge Meron for his briefing.

I now give the floor to the President of the International Criminal Tribunal for Rwanda.

Judge Møse: It is a great honour to address the members of the Security Council. I welcome this opportunity to present the ninth annual report of the International Criminal Tribunal for Rwanda (ICTR) (S/2004/601), which was presented to the General Assembly last week at its 53rd plenary meeting, and to provide an assessment of the implementation of our completion strategy, in conformity with Security Council resolution 1534 (2004).

Even though only five months have elapsed since the ICTR President and Prosecutor last appeared before the Council, at the 4999th meeting, held on 29 June, much has been achieved. The ICTR submitted an updated version of its completion strategy to the Security Council last week. I understand that this document is now available to the members of the Council.

It may be seen from the annual report that, during the period under review, the ICTR delivered five trial judgements involving nine accused. Another judgement was delivered on 15 July 2004. That brings the total number of trial judgements rendered by the ICTR since the first trial started in January 1997 to 17, involving 23 persons. The next judgement is expected in early 2005. Never before has the judicial output been so high.

In 2003, the ICTR commenced four new trials involving a total of 10 accused. This was due to the arrival of five ad litem judges that year. Security Council resolution 1512 (2003) increased their number to nine. The remaining four ad litem judges arrived in Arusha in September 2004 and made it possible to start two new trials. In 2004, we started a total of four new trials concerning seven detainees, six of them after the period covered in the annual report. Consequently, 25 persons are currently on trial. I would like to reiterate our appreciation to the Security Council for having adopted resolution 1512 (2003).

This brings me to three points that are relevant to the implementation of our completion strategy. The first point is that the ICTR now has a total of completed and ongoing cases involving 48 accused. That means that we have reached the number that was promised in our completion strategy of April this year.

Secondly, the members of the Security Council will recall that, in that completion strategy, it was projected that three trials would be completed in 2004. That aim has also been achieved. In June and July, the Trial Chambers delivered judgements in the *Gacumbitsi* and the *Ndindabahizi* trials. The third trial, *Muhimana*, has been completed and is now at the stage of closing arguments. Judgement is expected in early 2005.

The third point is that, according to the completion strategy of April 2004, three trials involving six accused would commence from May to September this year. That projection too was

accomplished. The *Simba* case started on 30 August; the *Seromba* case and the *Military II* trial commenced on 20 September 2004.

On that basis, I am pleased to confirm that the ICTR is on schedule. We intend to complete all trials by 2008, as required by resolutions 1503 (2003) and 1534 (2004).

Let me now provide a more detailed assessment. The ongoing trials involving the 25 accused may be divided into two groups: multi-accused and single-accused cases. Five trials are multi-accused cases, comprising a total of 22 persons. These trials are voluminous, complex and time-consuming, because the prosecution and the defence will call a large number of witnesses. I am, therefore, pleased to report that there has been considerable progress in the *Butare* trial, involving six accused, and the *Military I* trial, with four accused. In both trials, the prosecution recently closed its case after having called 59 and 82 witnesses, respectively. The defence teams will commence their cases in January 2005. In the *Government* trial, with four accused, there are only about 12 remaining prosecution witnesses.

The achievements in these three multi-accused trials are significant elements in the implementation of our completion strategy. Our experience with other multi-accused cases shows that the presentation of the defence case usually requires less time than the prosecution case because of less extensive cross-examination. The two remaining multi-accused cases are at a very early stage. The *Military II* trial commenced on 20 September 2004 and has been slowed down by illness. The *Karemera et al.* trial, which started in November 2003, will commence de novo, following a recent Appeals Chamber ruling to that effect. Those two trials will be given priority in 2005.

The single-accused cases are less complex than multi-accused trials and require less time. The *Gacumbitsi* trial started on 28 July 2003, and judgement was delivered on 17 June 2004 after 31 trial days. The *Ndindabahizi* case commenced on 1 September 2003, with judgement on 15 July 2004 after 27 trial days. In the *Muhimana* trial, which started on 29 March 2004, the parties presented their evidence in the course of 34 trial days. As already mentioned, judgement is expected in early 2005. Those three recent trials confirm the Tribunal's capacity to complete single-accused cases in less than a year even though the judges sitting in those cases are also conducting multi-accused trials. Two weeks ago, the prosecution also closed its case in the *Simba* trial, which started on 30 August 2004. I should add that we are now in the process of scheduling a new single-accused case from early 2005.

In order to ensure maximum judicial output, it is important to find the right balance between the multi-accused and the single-accused trials. The eight trials currently in progress are taking place in three courtrooms only. That makes our task difficult and requires careful long-term planning. Single-accused trials are normally slotted in when there are breaks in the voluminous trials — so-called twin-tracking — or they are heard in morning or afternoon shifts simultaneously with other trials. We are anxious to ensure the steady progress of the five multi-accused trials. Once they are completed, there will be only single-accused cases left. From then on, our task will be easier.

During our June meeting with the Security Council I mentioned the possibility of constructing a fourth courtroom. The shift system implies that each morning and afternoon session is about two hours shorter than a full day session. More courtroom capacity would be an important element in our completion strategy as it would make it easier to give priority to certain multi-accused trials and thereby reduce the total periods necessary to complete them. In view of the present climate of budgetary constraint, the construction of such a courtroom and its running costs should be based on voluntary contributions. We have therefore been exploring that possibility with two interested Governments.

I should also reiterate that our experience with the Trial Committee, composed of representatives of Chambers, the Prosecution and the Registry, continues to be very positive. The Committee is in contact with the various defence teams and has facilitated the trial readiness of several cases by identifying problems and solving them in a proactive way.

Let me emphasize — as I did in the General Assembly last week — that the ICTR can comply with the time frames established in Security Council resolution 1503 (2003) only if it is provided with sufficient resources. Unfortunately, certain Member States have failed to pay their contributions to the two

ad hoc Tribunals. As a consequence, the recruitment of new staff to the Tribunals has been frozen. So far, that has not had any significant effect on the ICTR completion strategy. We have been able to keep the trials going, but the situation is becoming critical. More than 80 staff members have left the Tribunal since the freeze was imposed. The number of vacancies is increasing every month. Many vacant posts are directly linked to the judicial production of the ICTR.

Let me provide some examples, mentioned in our updated completion strategy. As of today, there are nine vacant posts for legal officers in the three Chambers. Their recruitment has been put on hold as a consequence of the freeze. Those nine legal officers would have worked under the direct supervision of the judges. Several permanent and ad litem judges have no associate legal officers. The judges are sharing legal officers through ad hoc arrangements. This situation cannot continue. The Prosecutor will inform the Council of the serious problems that his office faces. Also, the Registry's ability to provide support to the judicial process is reduced. Furthermore, the lack of resources affects the defence teams. It is a paradox that indispensable financial contributions are not paid when the Tribunal is doing its utmost to complete its task.

That being said, I want to state very clearly that the Tribunal is fully committed to the completion strategy. We will make all efforts to achieve the goals laid down in the completion strategy, including completing all trials at the first instance by 2008.

I have already mentioned our results in relation to single-accused trials. We are regularly discussing how to increase our efficiency even further. We will continue to improve our working methods and will keep the members of the Security Council and the membership at large informed of any further measures to be taken.

The Prosecutor will reiterate that he remains committed to the deadline for conclusion of investigations by the end of 2004. He will also deal with indicted and suspected persons that remain at large, as well as his plans for transfer to national jurisdictions. On the basis of the Prosecution's requests for transfer, it will be for the Trial Chambers to decide whether a person shall be transferred. Let me only say this: a comparison between the previous and the present version of the completion strategy shows that in spite of the commencement of several new trials, the number of detainees awaiting trial in Arusha has increased from 15 to 18. That is not surprising. Three accused have been transferred to Arusha since April 2004. They were previously in the groups of indicted or suspected persons at large. The situation is simply that three fugitives accused of genocide have been arrested.

The Tribunal appreciates the cooperation of the Rwandan authorities. Last year I reported that there had been a steady flow of witnesses from Kigali to Arusha. I am pleased to state that the situation remains the same. On request, we have also received documentation from the judicial proceedings in Rwanda in order to evaluate fully the credibility of our witnesses. That is important to the integrity of the proceedings in Arusha. It is also essential that both parties, the prosecution and the defence, receive the necessary assistance to carry out their investigations in Rwanda.

Finally, let me add that cooperation within the Tribunal is excellent. The President, the Prosecutor and the Registrar meet regularly in the Coordination Council and are in frequent contact. The ICTR staff continue to be committed and hardworking.

Let me conclude by expressing our deep appreciation to the Security Council for its support to the ICTR. The Tribunal also thanks the Secretary-General for his continued support.

The President: I thank the President of the International Criminal Tribunal for Rwanda for his briefing.

I now give the floor to Ms. Del Ponte, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia.

Ms. Del Ponte: It is a great honour to be here again to provide an assessment of the progress made in the implementation of the completion strategy. A written assessment has already been distributed, and I intend to concentrate now on the major concerns.

The completion strategy has two components: the trial in The Hague of the most senior leaders responsible for the most serious crimes, and the referral of mid- and low-level perpetrators to domestic courts. Although significant progress was achieved on both fronts in the reporting period, it has to be stressed that a number of obstacles which are outside of the

Tribunal's control may still derail the completion strategy.

The first such obstacle is the lack of cooperation on the part of States, mainly in the arrest and transfer of persons indicted by the International Criminal Tribunal for the former Yugoslavia (ICTY). There are still 20 fugitives at large, and most of them should be tried in The Hague. A few of them, however, could be tried by domestic jurisdictions, and the relevant motions for their transfer have already been filed, or will soon be filed.

Among the fugitives are three individuals mentioned repeatedly in Security Council resolutions, unfortunately to no avail so far: Radovan Karadzic, Ratko Mladic and Ante Gotovina. In addition to those three key indictees, the other most senior fugitives are Borovcanin, Pandurevic, Popovic and Nikolic, who have been indicted for the Srebrenica genocide, and also the four generals — Lukic, Lazarevic, Pavkovic and Djordjevic — indicted for their direct individual responsibility, as well as for their command responsibility in the crimes committed in Kosovo in 1998 and 1999.

The objectives of the Tribunal, as established by the Security Council, will not be fulfilled until those accused are tried in The Hague. The Ministers of the European Union made the same assessment when they stated, on 12 July 2004, that

> "the work of the ICTY would not be completed without the arrest and transfer to The Hague of key indictees such as Radovan Karadzic, Ratko Mladic and Ante Gotovina".

Furthermore, delays in the arrest and transfer of those fugitives make the planning of the trials more complicated and undermine judicial efficiency, as it is not possible to join similar cases in one trial. For instance, Karadzic could have been tried together with Momcilo Krajisnik, another former senior leader of Republika Srpska within Bosnia and Herzegovina, whose trial is ongoing. Lukic, Lazarevic, Pavkovic and Djordjevic could still be tried together with Milutinovic, Ojdanic and Sainovic, who are awaiting trial in the Tribunal's detention unit.

The situation is similar for Gotovina. His two co-accused, Cermak and Markac, are also awaiting trial. Borovcanin, Pandurevic, Popovic and Nikolic should be tried with Beara, who was arrested and transferred recently. It is therefore of crucial importance for the completion strategy timeline that those arrests be made as soon as possible so as to avoid duplication of efforts and waste of resources.

The Governments of Croatia, Serbia and Montenegro, and Bosnia and Herzegovina bear the main responsibility for bringing those fugitives to The Hague. A vast majority of them, probably more than a dozen, live freely in Serbia. Prime Minister Kostunica has made it clear that he is not willing to arrest fugitives — only to try to convince them to surrender voluntarily. On 13 July, the sealed indictment against Goran Hadzic, the former President of the so-called Republika Srpska Krajina, in Croatia, was handed over to the relevant authorities in Belgrade, which were also provided with the precise whereabouts of Hadzic. Only hours later, my investigators observed that he had been informed and left immediately. He has since disappeared.

On 8 October, detailed information about the location of Ljubisa Beara, a close aide to Ratko Mladic indicted in 2002, was forwarded to the Serbian Prime Minister. Beara did not resist arrest, and he was transferred to The Hague on the night of 9 October. Obviously, that arrest happened only because my Office provided full information on the fugitive's location, and because Belgrade knew that we were monitoring Beara's residence. Furthermore, I was due to address the Ministers of the European Union two days later. Only such immediate pressure seems to produce results. However, my Office cannot be expected to do the same for each and every fugitive. Furthermore, for their own domestic political reasons, the Serbian authorities presented that arrest as a voluntary surrender. They underlined thereby their official policy, which is that all fugitives should voluntarily surrender. But that policy has not produced any results so far, and it blatantly contradicts the country's international obligations, namely under article 29 of the ICTY Statute and numerous Security Council resolutions.

The Serbian Government has deliberately chosen to ignore its legal obligations. Serbia's consistent failure to cooperate was once again brought to the attention of the Council on 4 May 2004 in a report forwarded by the President. In the meantime, the Serbian Government's attitude of defiance towards the Tribunal, which also challenges the Council, has not changed.

There is, however, some progress to report in the areas of cooperation that are within the competence of the State Union of Serbia and Montenegro. Thanks to the effective work of the National Cooperation Council, the huge backlog of waivers authorizing officials or former officials to be interviewed has been dealt with. There is also a desire to resolve issues related to access to documents, but many difficulties remain, principally because the documents requested are in the hands of authorities who are blocking cooperation with the Tribunal. All in all, the lack of cooperation on the part of Belgrade remains the single most important obstacle faced by the Tribunal in the implementation of the completion strategy.

Whereas most fugitives have found safe haven in Serbia, some still reside in Bosnia and Herzegovina or travel regularly to that country. They continue to enjoy the protection of powerful networks. The High Representative has taken energetic measures against those networks that include the beginning of structural reform at the State and entity level. But the fact remains that, nine years after Dayton, the authorities of Republika Srpska have not apprehended a single individual indicted by the ICTY. That raises fundamental questions about the willingness of Republika Srpska leaders to fulfil their pledges to cooperate with the ICTY by taking firm action.

It also now confirms, I believe, the fact that there are fundamental, systemic weaknesses built into the law enforcement and security structures in Bosnia and Herzegovina, and in particular the Republika Srpska. They must be tackled so that the structures finally help, not hinder, the country in cooperating with the Tribunal. The Ministries of Defence and of the Interior of Republika Srpska cannot by any reasonable standards be judged to have helped in this regard. The report of the Srebrenica Commission imposed upon the Republika Srpska by the international community, once published, should help raise awareness of the genocide and of the necessity to punish those responsible.

The Stabilization Force (SFOR) has supported the Tribunal over the years. It will soon have completed its mandate, which should be taken over by the European Union-led peacekeeping force (EUFOR) and NATO. It is a great frustration for me that SFOR has to leave while Radovan Karazdic is still at large, especially since all SFOR commanders promised that they would arrest him during their tenure.

In my view, success will come only when the relevant authorities in Serbia and Republika Srpska finally work together with international forces. That type of transborder cooperation needs to be further encouraged throughout the region. In this context, the transfer of Miroslav Bralo on 12 November is a positive development. The accused had been indicted on a sealed arrest warrant in 1995. There were strong indications that he was in Croatia, although this was denied by the Croatian authorities. The seal was lifted on 12 October 2004, and he was surrendered in Bosnia and Herzegovina just one month later.

Whereas most of the fugitives are in Serbia or in Bosnia and Herzegovina, there is one senior accused who has been seen repeatedly in Croatia, as recently as last summer. Ante Gotovina disappeared in June 2001, just after he had been informed by the Croatian authorities of a sealed indictment against him. This spring, Croatia apparently stepped up its efforts to locate and arrest Gotovina. However, doubts may be raised concerning the effectiveness of those measures, or even their seriousness, as they have not produced any concrete results so far, not even relating to his whereabouts inside or outside of Croatia. On the other hand, there are strong indications that Gotovina, whose public image as a national hero is not denied by anyone, has enjoyed, and continues to benefit from, a well-organized support network, including within State structures. It is of paramount importance for the completion strategy and for the overall achievements of the ICTY that Gotovina be brought to justice in The Hague. That is the only remaining obstacle to the cooperation of Croatia with the ICTY. As soon as Gotovina is in The Hague, it will be possible to say that Croatia is indeed cooperating fully with the Tribunal. The failure to locate Gotovina, either inside or outside of Croatia, and to transfer him means that the networks protecting war criminals are more powerful than the part of the Government that genuinely wants to cooperate fully with the Tribunal. Should international pressure recede in this case, it will be perceived as a signal that the international community may not be interested anymore in having the most senior leaders responsible for the most serious crimes, including Karadzic and Mladic, appear in front of the ICTY.

The arrest of all fugitives is also a measure of the ability of States to proceed with domestic trials, as it is indicative of their commitment to the rule of law. The

second key component of the completion strategy is the deferral to the States of the former Yugoslavia of indicted and non-indicted cases concerning medium- and low-level indictees. However, the ICTY must be cautious that the States to which cases are transferred are able and willing to proceed with trials, and that those trials are led in accordance with the highest judicial standards. The ICTY has been actively supporting the establishment of specialized war crimes courts throughout the region. The Prosecutor's Office has contributed its expertise to training seminars for prosecutors and judges so as to enhance the capability of national jurisdictions to try war crimes in fair and credible trials. We continue to support the efforts of the Office of the High Representative to establish a war crimes chamber within the State Court of Bosnia and Herzegovina to try accused of lower and intermediate rank who were originally indicted by the Tribunal. However, ultimately, the proper functioning of those institutions is beyond our control.

There is a legitimate concern that a country like Serbia, which is not willing to arrest indictees, will not be either interested in or capable of trying alleged war criminals domestically. The networks supporting persons accused of war crimes are so powerful there that they can interfere with the judicial proceedings, including by intimidating witnesses and by exerting political pressure on judges and prosecutors, or even by threatening the stability of the country.

Both in Serbia proper and in Kosovo, aggressive nationalist rhetoric is being used in smear campaigns against the Tribunal and its Prosecutor. The message is the same: if the authorities cooperate with the ICTY, it will destabilize the country. The groups orchestrating such propaganda are talented at threatening or causing violence and at blaming the ICTY, incarnated by its Prosecutor, for it. The international community and the democratically elected authorities in the region should taken further decisive measures against those networks.

When selecting the jurisdiction to which it intends to refer cases back, the ICTY will have to consider the general climate in the countries concerned. It will also have to take into account the interests of the victims. In accordance with the principle that justice should be rendered as close as possible to the victims and to the place where the crimes were committed, the Prosecutor's policy is that, where possible, a case should be referred to the authorities of the State where the crimes took place. By the end of the year, 11 indicted cases concerning 20 accused will have been proposed to the Chambers for transfer to domestic jurisdictions in accordance with rule 11 bis of the ICTY Rules of Procedure and Evidence.

The third area of concern impacting on the completion strategy which is beyond our control is the provision of adequate resources to my Office. As members are well aware, the Secretariat imposed a freeze on new recruitment in May 2004. Moreover, the 2005 budget for the Investigations Division was not approved. Those measures have been taken at a time when other bodies, including United Nations bodies, are offering very competitive packages to investigators and prosecutors of my Office. Over the past year, the Office of the Prosecutor has lost over 40 per cent of its senior investigators and almost 50 per cent of its senior legal staff. Due to the hiring freeze, they can be replaced only through internal promotion, and that creates additional problems, as it is becoming increasingly difficult to continue to promote internally to senior levels without compromising professional standards. The vacancy rate in my Office is now close to 25 per cent. That situation is already impeding the work of the Office and could soon impact on the efficiency of the trials.

The lack of cooperation of States, the state of preparedness of domestic jurisdictions and the financial crisis are the three major factors impacting negatively on the completion strategy. I remain committed, however, to the completion strategy and to its time frame.

The first major milestone in the implementation of the completion strategy will be the closure of all investigations by the end of this year. All of the six remaining investigations will be completed before 31 December, with a number of new indictments issued. However, since two of those indictments could be joined with two existing cases, that would result in a maximum of only four additional trials to be carried out in The Hague. On the prosecution side, efforts are being made continuously to support the judges in their efforts to streamline the procedures and increase the efficiency of trials. My Office is currently ready to begin five trials, and it is involved in five other ongoing trials.

Those efforts will have no effect, however, unless all accused are brought to The Hague in time to be

tried before the end of 2008. As we enter the second phase of the completion strategy, 2005 will be crucial. If some of the most important indictees, like Karadzic, Mladic and Gotovina, are not arrested and transferred in the months to come, it may be necessary to revise the target dates of the completion strategy.

The year 2005 will also mark the tenth anniversary of three key events: the Srebrenica genocide, the Dayton Agreement, and the indictments against Karadzic and Mladic. If the international community could not prevent the genocide, it should at least not allow that and other very serious crimes to be left unpunished.

The President: I thank the Prosecutor for her briefing.

I now give the floor to the Prosecutor of the International Criminal Tribunal for Rwanda.

Mr. Jallow: Some five months ago, in my last report to the Security Council, I projected that the prosecution expected to close its case in the trial of 10 accused persons before the end of the year and of four others early in 2005. I reported that we were ready to commence the trial of six other accused before the end of 2005, to conclude our investigations into new targets by the end of 2004 and to determine new indictments, if any, by October of 2005, and that consultations with Rwanda and other countries on the transfer of cases to national jurisdictions for trial would be initiated.

I am happy to report progress in those matters. Since that report, the prosecution has closed its case in the *Military I* trial and in the *Butare* trial, totalling 10 accused persons. The defence case is expected to commence in January 2005. We expect to close the prosecution phase in the *Government II* trial of four accused persons by June 2005. The multiple-accused trials present a considerable challenge to the completion strategy because of their complexity and the logistics involved in keeping them going. With the conclusion of the prosecution case in the *Government II* trial in June 2005, the challenge posed by this category of cases will have been considerably reduced.

As projected, the prosecution opened its case in respect of six more accused during the second half of 2004 with the *Military II* case and the single-accused *Simba* and single-accused *Seromba* cases. I am pleased to report that we have already closed the prosecution phase in the *Simba* case and would have done so in the *Seromba* case but for the defence request for adjournment. We expect, however, to close our case in the *Seromba* trial by the end of February 2005.

As the President of the Tribunal has indicated, my Office remains committed to the deadline for concluding investigations into any new indictments by the end of 2004 and the filing of any new indictments which may arise by the last quarter of 2005, as we advised the Security Council at our previous meeting.

The Office of the Prosecutor is also preparing for trial the cases of the remaining detainees, who now number 18. In that connection, we propose to be ready to commence new trials in respect of at least eight of those detainees during 2005, in accordance with the new indictment policy of single-accused cases. In addition, the trial of four other accused should be ready to commence de novo by January 2005 in the *Government I* case, in accordance with the recent decision of the Joint Appeals Chamber of the two Tribunals.

I have initiated discussions with Rwanda and other States on prospects for the transfer of cases to those States. Those discussions are ongoing. At the same time, the Office of the Prosecutor is preparing the case files that have been identified for transfer. We propose to make the necessary applications to the Trial Chambers in early 2005 for orders for transfer of those cases. Nevertheless, I must caution that, apart from Rwanda, it is not proving easy to find States which are ready, able and willing to take on cases for prosecution from the Tribunal. Our options in the choice of States are considerably limited.

The apprehension and transfer of indicted fugitives also continues to be fraught with difficulties. Ephrem Setako, who was arrested earlier this year in the Netherlands, was finally transferred to the Tribunal a week ago. Fourteen other indicted persons remain at large. The level of international support by States in which such persons reside has fallen below what is required for a successful arrest programme. The bulk of our fugitives continue to be based in the Democratic Republic of the Congo. Several attempts by the Tribunal to have a dialogue with the Government of the Democratic Republic of the Congo on this matter have elicited no response, save for the isolated case of Yusuf Munyakazi, who was surrendered earlier this year. We shall nonetheless continue our efforts and report back to the Council on the situation. Meanwhile, we believe

that it is necessary for the Council to exhort Member States to live up to their legal obligations in this respect and to comply with Security Council resolution 1503 (2003) in arresting indicted fugitives in their territory and transferring them to the Tribunal for prosecution.

We remain committed to the implementation of the completion strategy and see no need for any further revision of it. In many respects, as I indicated at the beginning, we are on schedule. But in my previous briefing, I did alert the Council to the potentially adverse impact of the recruitment freeze on the success of the completion strategy. I said then that the trials cannot proceed optimally unless adequate resources are provided for the core activity of the Tribunal — that is, prosecution — to be carried out effectively.

The year 2005 will pose a real challenge. During that year we expect to have the highest number ever on trial simultaneously at the Tribunal. I do not expect the peak to decline before 2006. The number of appeals cases, currently standing at 14 persons, is expected to rise considerably with the conclusion of each new trial, as every decision in respect of each accused will — based on experience — lead to one or perhaps two appeals. It is anticipated that in 2005 the Office of the Prosecutor may have to deal with as many as 30 appeals.

Intense work will continue on the preparation of cases for trial and for transfer. While 2004 has registered some progress in the preparation and trial of cases, it will be a great challenge to sustain this progress and deal with the anticipated increased workload while continuing to suffer the consequences of the recruitment freeze and resource constraints.

The freeze on recruitment has hit the Office of the Prosecutor particularly hard. Although the Security Council created a separate Office of the Prosecutor for the ICTR last year, the recruitment of the staff for the Office has been interrupted by the freeze. Only half of the complement of six support staff are in place. Likewise, the new Appeals Unit, which was established pursuant to the same Council resolution that created that Office, is below full capacity — in fact, it is at about half its budgeted strength due to the freeze — at a time when its workload is increasing, and will continue to increase as more trials are completed and more appeals are lodged.

In the Prosecutions Section, the interruption of recruitment has left 17 vacancies, comprising the posts of senior trial attorney, trial attorney, senior legal adviser, legal adviser, legal researcher and case manager. Recent developments have added the post of chief of prosecutions to the list of vacancies, which is therefore subject to the freeze on replacement.

There are currently 21 vacant posts in the Investigations Division in Kigali, as well as four vacant posts in the Legal Advisory Section. The Section, which is responsible for the drafting of indictments, is now almost non-existent at a time when, by the conclusion of investigations at the end of 2004, the Office of the Prosecutor is to turn its attention to evaluating the results of investigations and preparing new indictments through the Unit.

The filling of all those positions is crucial and absolutely necessary for us to meet the challenge of proper completion. Those positions are directly concerned with the critical and core function of prosecution. A way must be found to lift the recruitment freeze if we are to avoid putting the completion strategy at risk. With a considerably low capacity the Office of the Prosecutor will be hard put to prepare new cases, continue ongoing trials and deal with the new and increased appeals workload at the same time that it undertakes the programme of transferring cases.

I would like to take this opportunity to thank the Security Council and the Secretary-General and his Office for their continued support for the ICTR in general, and for the Office of the Prosecutor in particular.

Mr. Lucas (Angola): I would like to start by thanking the President for convening this debate. Likewise, I wish to thank the Presidents and Prosecutors of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda for their assessments and reports presented to the Security Council pursuant to resolution 1534 (2004). Those reports were eloquent and enlightening with regard to the resolve of the international community to address the consequences of the very painful episodes that occurred in the former Yugoslavia and Rwanda. We acknowledge with appreciation the valuable contribution of the two International Tribunals to the efforts of the United Nations and the international community to combat impunity and to bring to justice

all those responsible for serious violations of international humanitarian law, thereby supporting peace and stability and the process of national reconciliation in the countries of the former Yugoslavia and in Rwanda.

Despite the complexity and the unprecedented nature of their mandates, the Tribunals are meeting the Security Council's goal of ensuring that persons responsible for war crimes, genocide and crimes against humanity are accountable for their crimes in just, fair and public trials meeting strict standards of due process. In order to fulfil their mandates and meet the goals set by the completion strategies, the Tribunals must be able to try the most senior leaders indicted by the Tribunals. However, as long as many of those individuals remain at large, the Tribunals will be unable to cor lete their missions — a situation that calls for the stepping up of international cooperation in order to capture those persons and bring them to justice.

In addition to the need for international cooperation in order to bring all indictees to account, as recognized by Security Council resolutions 1503 (2003) and 1534 (2004), a key component of the Tribunals' work entails referring lower- and mid-level accused persons to national jurisdictions. Such a strategy will enhance the critical involvement of national Governments in the strengthening of long-term national reconciliation, justice and the rule of law. In that regard, while we recognize that further progress is still required in connection with many issues, we note with appreciation that the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY) has begun to file motions for the transfer of cases to domestic jurisdictions. It is our hope that national jurisdictions will be able to deliver free, fair and equitable trials. We welcome the significant steps that have been taken in each of the countries concerned to make such an endeavour a reality. The fact that the special Chamber of the State Court of Bosnia and Herzegovina will soon be ready to accept cases is a significant development.

With regard to the International Criminal Tribunal for Rwanda (ICTR), my delegation believes that the biggest challenge ahead will be the completion of its mandate within the timeframe set by the Security Council. As stressed by the Tribunal's President and Prosecutor, meeting that challenge will require the full cooperation and commitment of the international community, including the provision of the necessary human, material and financial resources to enable the ICTR to complete trials at first instance by the end of 2008 and appeals by the end of 2010. The transfer of low- and mid-level cases to national jurisdiction is also a matter of great importance that deserves appropriate attention by the international community.

As confirmed by the assessment reports presented today, the implementation of the completion strategies for the two Tribunals is on course. It is our hope that the Tribunals' fundamental achievements — moving from impunity to accountability, establishing facts, doing justice vis-à-vis the victims and giving them a voice and strengthening the rule of law — will contribute decisively to peace, stability and long-term national reconciliation in each of the countries concerned and in their respective regions.

Mr. Katti (Algeria) (*spoke in French*): We have very closely and attentively listened to the briefings by the Presidents and Prosecutors of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). We note that, since their presentations to the Council on 29 June 2004, progress has been made to end impunity by bringing to justice persons suspected of committing serious violations of international humanitarian law. We also note that the Tribunals' completion strategies, which were adopted by the Security Council in 2003, have met with great difficulty. That situation has not improved since the Council last considered the matter, given that the Tribunals continue to face serious financial problems due to the non-payment of financial contributions by Member States. The expenditures of the two Tribunals have been kept to a minimum, recruitment has been frozen and the capacity of the Tribunals to carry out their mandates has been seriously compromised. That is an unacceptable situation, and it is important that the States concerned make their financial contributions as soon as possible.

The General Assembly's election of 14 judges to the ICTY on 19 November 2004 was an encouraging development that we hope will have a positive impact on the functioning of the Tribunal. Similarly, and despite the Tribunal's heavy workload, the changes made to the rules of procedure and the efforts undertaken to establish a special chamber in Bosnia and Herzegovina to prosecute war crimes are positive developments. We hope that will help the Tribunal to

complete its work within the time frame that has been specified.

It is important that persons accused by both Tribunals of committing low- and mid-level crimes be brought before the competent national jurisdictions. It is also important that the States concerned cooperate with the Tribunals with regard to access to documents, arrests and bringing accused persons to justice. The Security Council must ensure that happens, as the authority and very credibility of the two Tribunals is at stake. In that regard, my delegation would like to express its appreciation to the Government of Rwanda for its cooperation with the Rwanda Tribunal.

Moreover, Republika Srpska's arrest on 15 November of a high-level accused is, in this regard, a welcome development. The other criminals at large, such as Radovan Karadzic, Ratko Mladic and Ante Gotovina, as well as those still at large in Rwanda, must be apprehended.

In conclusion, my delegation would like to reiterate its support to the Presidents and Prosecutors of the two Tribunals in carrying out their responsibilities and in their efforts to fight impunity.

Sir Emyr Jones Parry (United Kingdom): Allow me to begin by thanking the Presidents and the Prosecutors for their reports. The United Kingdom continues to support wholeheartedly the work of both Tribunals. Bringing justice to the indictees is particularly important some 10 years after the signature of the Dayton Agreement and the establishment of the International Criminal Tribunal for Rwanda (ICTR).

Allow me to begin by addressing the issue of the International Criminal Tribunal for the Former Yugoslavia (ICTY). We welcome the Tribunal's efforts to increase efficiency and to stay on course for meeting the completion strategy. The re-election of most of the Tribunal's sitting judges last Friday will help keep things on track. However, what we heard this morning is a rather sobering account of the obstacles to keeping that strategy on course. I would like to concentrate on just a few of what I believe to be the most important points.

First, regarding financing, as we have heard, the freeze on recruitment is beginning to affect the Tribunal's work, and that can only get worse. The obligation of and the need for all States to pay their dues to the Tribunal are obvious. The failure to do so, as we have heard, is jeopardizing the completion strategy and will lead to more costs. The 25 per cent vacancy rate quoted to us this morning is an appalling figure.

Secondly, regarding the transfer of cases to the region, the Tribunal has done excellent work in assisting national courts in the former Yugoslavia to prepare and receive transferred cases. We hope that the war crimes chamber of the State Court of Bosnia and Herzegovina becomes operational in January, as predicted. There can be no doubt, the Chamber will need the continued support of the donor community. The United Kingdom has pledged £2.6 million over the next five years. Our hope must obviously be that other countries in the region will be able to develop the capacity to receive cases from the Tribunal in the near future.

But I want to underline our very strongly held view that the three key indictees, Mladic, Karadzic and Gotovina, have to be tried before the ICTY. The United Kingdom does not believe that the replacement of the Stabilization Force by the European Union-led force, which we do indeed welcome, should bring any diminution in our resolve to arrest Karadzic.

Thirdly, regarding cooperation with the ICTY, the Tribunal's work is dependent on the arrest of the indictees and their transfer to The Hague. That is crucial, and 20 indictees at large is far too many. In our view, the transfer of Karadzic, Mladic and Gotovina is crucial to the long-term stability and prosperity of the region.

I would like to be absolutely frank about this. We know that Karadzic spends most of his time in Republika Srpska and that he moves from place to place. A network of people and institutions protects and presumably finances him. Why is it, therefore, that no one seems to know where he is — or indeed, where he has just been, which should be much easier to know? Why is it that none of the arms of the Government, local individuals or local figures in contact with the community, such as priests, are prepared to volunteer information? That information would enable the most sought-after indictee to be brought to face the Tribunal. What we need is real-time intelligence that permits this man to be apprehended. Do those in positions of authority really believe that they can outwait justice or that their inaction is consistent with integration into European and Atlantic

institutions? Do they believe that continued avoidance of arrest actually promotes the reconciliation that we all hope for in the Balkans?

The same goes, very clearly, for Mladic, whom we know to be in Serbia. It is very disappointing to hear once again this morning that Serbia and Montenegro remains the country that is the most reluctant to cooperate. Cooperation is not optional. It is a legal obligation. Yet certain indictees in Serbia and Montenegro remain free to move about the territory without even bothering to hide.

We welcome Croatia's cooperation in giving unrestricted access to documents and witnesses. We agree with the Prosecutor that Croatia's cooperation cannot be regarded as complete until Gotovina is arrested and transferred to The Hague. Earlier this year, the Prosecutor was able to give a positive assessment of Croatia's efforts to arrest Gotovina. But this morning the Prosecutor reported that efforts have slowed down and that no significant progress has been made. Moreover, the Prosecutor asserts that Gotovina continues to benefit "from a well-organized support network, including within State structures" (*supra*). Cooperation is about more than meeting a legal obligation. It is about ending impunity; it is about bringing to justice individuals indicted of horrendous crimes; and it is about furthering reconciliation within and between Balkan States. There should be no doubt that continuing non-cooperation will frustrate any aspirations of the authorities in Belgrade, in Zagreb or in Banja Luka to closer integration with Euro-Atlantic structures. I would be very grateful if the Prosecutor, in responding to this debate, could be more direct not only about what she believes are the reasons why the Governments concerned are not meeting their obligations, but also about what specifically she thinks they should do and how we might be able to help to encourage them to do it.

Finally, the President of the ICTY has drawn attention to the need to address the issue of prisoners serving ICTY sentences after the end of the completion strategy. The United Kingdom was pleased to enter into a sentence enforcement agreement with the Tribunal earlier this year, and we would welcome further dialogue on this and on other residual issues in due course.

Allow me to turn now to the International Criminal Tribunal for Rwanda (ICTR), on which I will be much more brief. This brevity, however, does not in any way imply less interest in that key Tribunal. We warmly welcome the Tribunal's efforts to improve its efficiency, the changes that have taken place in the last 12 months and the trend towards shorter trials. The completion strategy is clearly at the centre of the overall management of the Tribunal. However, once again, as for the ICTY, the freeze on recruitment is bound to have an impact on the Tribunal's efficiency. Again, the need for States to meet their financial obligations is obvious.

The number of fugitives is, again, too large: 15 is far too high a number. In another parallel with the other Tribunal, States must comply with their obligations to cooperate by arresting individuals and transferring them to the Tribunal. The transfer of cases to national jurisdiction is, again, a sensible strategy. We assume that the majority of cases will be transferred to Rwandan jurisdiction. We would therefore welcome views on the readiness of Rwandan courts to accept such cases and on how the capacity of the national courts could best be supported.

In conclusion, I would like to say that the whole question of ending impunity and delivering people to justice is fundamental to the rule of law, which is a crucial element in leading any country out of conflict and in actually building peace. That is why, for the United Kingdom — and, I believe, for the Security Council, in all the resolutions we have adopted — we do not trot out that we want individuals to go to The Hague just for the sake of retaliation or for some response after the event; we want that because it is in everyone's essential interest that that should happen.

In the end, Governments have the ultimate responsibility to ensure that the rule of law applies and is supported. Those are the fundamentals of the Euro-Atlantic structures. That is why the Governments that look to benefit from those structures need to get a simple message: these people have to be taken to The Hague.

Mr. Valle (Brazil): First of all, I would like to thank Judge Theodor Meron, President of the International Tribunal for the Former Yugoslavia (ICTY), and Judge Erik Møse, President of the International Criminal Tribunal for Rwanda (ICTR), as well as Prosecutors Carla Del Ponte and Hassan Bubacar Jallow for their thorough reports on the level

of progress achieved in the work of the two courts, as well as on the difficulties that are prevailing.

Almost 10 years after the establishment of the ICTY and the ICTR, there is no doubt about the importance of their contribution to international law. They can be seen as a successful example of the commitment of the international community to ensuring that those responsible for the most heinous crimes, which offend the very essence of human dignity, answer to them in public trials meeting the highest standards of international justice and due process.

As acknowledged in the report presented by the President of the ICTY to the Security Council, the international community faces the challenge of adapting the inherent limitations of ad hoc judicial arrangements to the principle of due process and to the rights of both victims and those accused, as well as to the overall objective of bringing an end to impunity. It is necessary that the Tribunals remain committed to the goals set forth by resolution 1534 (2004), while concentrating resources and efforts to make sure that the most senior leaders suspected of being responsible for crimes within the jurisdiction of the courts be prosecuted.

In our view, the transfer of cases involving lower-ranking officials to local courts, in accordance with rule 11 bis of the Tribunals' rules of procedure and evidence, should reflect the actual conditions of those judicial instances to provide independent judgements. In addition, given the difficulties in implementing the completion strategy, we believe that insisting on rigid deadlines as set out in the completion strategy may frustrate justice rather than assist the international community to end impunity. The Council may eventually need to adjust those timetables in order to enable the Tribunals to fulfil their mandates.

We are seriously concerned over reports regarding a lack of cooperation with the Tribunal on the part of interested countries. It is not acceptable that United Nations Members disregard their obligations under the Charter, the Tribunal Statutes, the rules of procedure and evidence and the relevant Security Council resolutions. We urge Member States directly involved in the Tribunals' work to fully cooperate with them, ensuring the prompt surrender of fugitives and access to pertinent documentation.

Moreover, it is essential that the Tribunals continue to rely on adequate resources and personnel to perform their functions. Financial difficulties present a threat to the accomplishment of their duties and to the ability to meet the completion strategies.

Mr. Guan Jian (China) (*spoke in Chinese*): We listened carefully to the reports of President Meron and Prosecutor Del Ponte of the International Tribunal for the Former Yugoslavia (ICTY) and of President Møse and Prosecutor Jallow of the International Criminal Tribunal for Rwanda (ICTR). We express our appreciation to the Tribunals for their work.

The two Tribunals have continued to take steps to actively implement the completion strategies. We commend them for their work in that regard. We are gratified to note that, in accordance with the time frame set out in the completion strategies, the two Tribunals will complete all investigative work by the end of this year, thus marking a propitious beginning to the successful implementation of other goals outlined in the completion strategies. We believe that the timely transfer to competent national jurisdictions of cases involving intermediate and lower rank suspected of being responsible for crimes is of crucial importance; it will help to ensure that the two Tribunals complete their work as scheduled and that reconciliation and justice can be realized in the two countries and regions.

The transfer process should be intensified when that is practicable. We note that the Prosecutors of the two Tribunals have begun to submit proposed transfer cases to the competent Trial Chambers for approval. We hope that the War Crimes Chamber in Bosnia and Herzegovina will be operational by January 2005, and we expect that Croatia, Serbia and Montenegro, Rwanda and a few other countries will be prepared to receive appropriate cases at an early date.

We appreciate the efforts of the two Tribunals and of the international community to strengthen the national judicial capacity-building in both regions. We believe that the Security Council, the countries concerned and the Tribunals should continue to assist in the establishment of national chambers that conform to international standards.

It is our hope that, with their vast experience and expertise, the Judges of the two Tribunals will, in addition to ensuring fair trials, further enhance the efficiency of trials and accelerate trial processes. In that regard, it is necessary that both the Trial Chambers

and the Offices of the Prosecutors make specific arrangements to ensure that those objectives can be attained.

Mr. Lacanilao (Philippines): We would like to begin by noting the conclusion of the election of judges to the International Criminal Tribunal for the Former Yugoslavia (ICTY) last Friday. We hope that that will provide impetus to the efforts of the Tribunal as we face the final years of its work.

My delegation would like to thank the Presidents and the Prosecutors of the two Tribunals for their reports this morning. We note with satisfaction that, first, the Tribunals continue to operate at full capacity and secondly, since the last time the Council heard their reports, in June this year, the Tribunals have continued to improve the efficiency of their proceedings and to concentrate their focus on the most senior leaders suspected of being responsible for the most serious crimes.

We commend the efforts to establish institutions and rule-of-law mechanisms in the national jurisdictions of concerned countries to prevent impunity and to promote justice. We hope that the situation of the International Criminal Tribunal for Rwanda (ICTR) is now more hopeful and hope that the Tribunal will continue its work towards the achievement of the completion strategy.

I would like to comment on the points raised in the report of the ICTY. We commend its efforts to contribute expertise to training seminars for judges and prosecutors in the former Yugoslavia so as to enhance the capability of national jurisdictions to try pending cases as well as to support the efforts to establish a War Crimes Chamber within the State Court of Bosnia and Herzegovina. We believe that the bulk of the cases will need to be tried by national courts and that, aside from being a critical element of the completion strategy, the ability of the Tribunal to refer cases to competent national jurisdictions for trial will enhance the involvement of national Governments in bringing reconciliation and justice to the region. That will serve the process of healing wounds and strengthening the sense of nationhood of the republics in the former Yugoslavia. I hope that, in his closing statement, Judge Meron will be able to provide an indication of when cases of minor suspects could actually be transferred to national jurisdictions.

Today, we again heard the plea of the Tribunals to have adequate personnel to perform their work. We were informed last June that this requirement had been seriously affected by the hiring freeze, which not only limits the ability of the Tribunals to take on new staff to meet their increasing workload, but also prohibits hiring even to replace essential personnel who leave the Tribunals. The Tribunals also pleaded for support to improve their ability to retain qualified staff and rectify the severe staff shortage. We hope that this problem will be addressed in the near future, as it could affect the completion strategies. I hope that the concluding statements will further elaborate on why the problem still persists.

My delegation is fully cognizant of the challenges and difficulties involved in achieving the completion strategies, specifically the requirement for the completion of all trials by 2008. We hope that the Tribunals will faithfully comply with the timelines set by the Council in the completion strategies. We understand that major fugitives are yet to be brought before the Tribunals and that any delay in their arrest would have an adverse impact on the Tribunals' work. We call on all concerned delegations to cooperate fully with the Tribunals so that all trials can end by 2008 and the Tribunals can be closed by 2010. My delegation would not want to see any further adjustments to the completion strategies.

Mr. Trautwein (Germany): First of all I would like to thank the Presidents of the two ad hoc Tribunals — the Honourable Judge Erik Møse and the Honourable Judge Theodor Meron — as well as the Chief Prosecutors of both tribunals, Mr. Hassan Bubacar Jallow and Ms. Carla Del Ponte, for their reports to the Council. I would also like to express my gratitude to them and to their staff for their hard work and dedication to the realization of international justice. Let me also express my sincere condolences on the passing away of Judge Richard May. We commend his contribution to the work of the Tribunal and his able leadership in his capacity as presiding judge in the Milosevic case.

Germany welcomes the significant progress that has been made during the period under review by both Tribunals to implement their completion strategies in accordance with the time frame and other parameters established in Security Council resolutions 1503 (2003) and 1534 (2004).

But besides those positive developments, there are also factors that could have significant negative impact on the fulfilment of the completion strategies. Above all, it is imperative that Governments cooperate with the Tribunals, particularly the Governments of the regions in question and those suspected of providing haven to indicted fugitives. We again urge all States concerned to fully cooperate with the Tribunals.

Overshadowing the progress achieved by the Tribunals is the issue of their financial situation. The well-known funding problems have two interrelated components: the question as to whether the amount of money spent on the Tribunals is proportional to the benefits derived from them, and the poor level of honouring assessed contributions.

As the third largest contributor to the budgets of the Tribunals, we believe that every effort should be made to secure their effective functioning and to avoid any waste of money. All in all, we believe that the combined efforts of the Tribunals and of the United Nations budgeting and oversight mechanisms give us the necessary guarantees that the Tribunals are operating at acceptable levels of efficiency. That does not mean that they are inexpensive. But we believe that it is virtually impossible to put a price tag on the Tribunals' contributions to making peace and reconciliation sustainable, their contributions towards the reestablishment of justice and decency and their contributions to the development of international criminal law. Unless we prefer to pay the price of war, we should accept the cost of justice as an intrinsic part of the cost of peace.

Sir, allow me make a few final remarks. First, from now to the end of the completion strategies, the Tribunals will find themselves in a tight situation. They will be hard pressed to meet all expectations, and they will need all available assistance, including, and notably, from the Security Council. This implies an intensified dialogue, as envisaged by resolution 1534 (2004). Such a dialogue is a matter not of public speeches but of a detailed exchange of views, especially at the expert level. The Council should consider holding such expert meetings not only in New York but also at the seat of the Tribunals.

Secondly, the Council may also wish to consider the usefulness of endowing itself with steadier expertise on the Tribunals by agreeing to a steadier, elected chairmanship of the Working Group instead of a monthly rotating one.

Thirdly, I would like to assure the representatives of the Tribunals, as well as the staff members of the secretariats concerned, of Germany's continued and unwavering commitment to promote the noble ideals of peace and justice through the Tribunals, through the International Criminal Court and through other appropriate international or hybrid judicial or non-judicial mechanisms. Important progress has been achieved in this field over the last two years, and the Secretary-General's recent report on the rule of law and transitional justice (S/2004/616) has highlighted and conceptualized those developments in an extremely able manner. It has been a gratifying experience for us to be able to contribute, to the best of our ability, to many developments in the field of justice. We certainly wish to continue to do so in the future.

Mr. Yáñez-Barnuevo (Spain) *(spoke in Spanish)*: I particularly wish to express our thanks for the oral briefings and written reports from both Tribunals, from Judge Theodor Meron and Prosecutor Carla Del Ponte to the International Tribunal for the Former Yugoslavia (ICTY) and from Judge Erik Møse and Prosecutor Hassan Bubacar Jallow of the International Criminal Tribunal for Rwanda (ICTR).

Having been present in 1993 and 1994 at the establishment of both Tribunals by this Council, I welcome the result, the important work done by both Tribunals both to ensure that justice is served and to achieve the goal of national reconciliation within the territories of their two respective jurisdictions. I also welcome their important contribution to the development of international criminal law and international criminal proceedings applicable to similar types of judicial situations. As could clearly be seen in the reports and oral briefings, all that work is an essential contribution to the International Criminal Court, which is now beginning its enduring work in the service of the international community.

As some colleagues have said, we are not here to make long statements, but rather to see how we are going to ensure that the completion strategies for both Tribunals can be implemented in accordance with the provisions of the relevant Security Council resolutions and the arrangements established for each Tribunal.

We welcome the fact that both Tribunals have made undisputable progress in applying their respective completion strategies.

We note that work has intensified in both Tribunals, perhaps more so in the ICTR, possibly because it had been further behind until quite recently. There has been a considerable increase in the pace of work done by the judges. We also welcome the fact that steps are being taken to refer cases of comparatively lower importance to national jurisdictions in due time, once those jurisdictions have been properly prepared to take them on with full guarantees that justice will be served in accordance with international norms.

We stress that it is essential that the purpose for which the Tribunals were established be carried out effectively. That means that the completion strategies should not inadvertently become mere exit strategies at any cost: exit strategies which do not ensure that those who are most responsible for the serious events which took place in the Balkans and in Rwanda are brought to justice. That is an important point for both Tribunals, but also for the States concerned. We are particularly concerned by the fact that some countries are not cooperating fully with the Tribunals. It is thus a challenge for the Security Council, which should remain very vigilant and demanding on this point, as well as for the United Nations and the entire international community.

My delegation's second general observation is that both Tribunals should retain their respective strategies under continued assessment. If need be, they should be reviewed and adapted as deemed appropriate, as we note the ICTR has done. The Council should be informed of any changes that are made.

Thirdly, and like previous speakers, I wish to highlight the need for all States Members of the United Nations to pay their contributions to the budgets of both Tribunals, fully and on time. We recall and underscore that those contributions are obligatory under the United Nations Charter.

In any event, we support the appeals that have been made to lift the recruitment freeze in both Tribunals, in particular with respect to posts deemed essential for the legal work and for the implementation of the completion strategies. On this point, we propose that, in addition to receiving reports from each of the Tribunals, we should also receive periodic reports from the Secretariat, since the recruitment freeze stems from the Secretariat. We would like the Secretary-General to tell the Security Council why that decision was taken, and why it is not now possible to lift the freeze, either partially or fully. As we can see, the freeze is beginning to seriously affect the implementation of the completion strategies.

We would like also to express our interest in the ideas that have just been put forward by the German delegation. First, in order to show its continued interest in the proper implementation of the Tribunals' statutes and completion strategies, the Security Council should continue the mandate of its working group on this issue. Also, there might be periodic visits to the headquarters of the Tribunals to provide an opportunity for more direct and detailed discussions with their leaders.

In conclusion, I have a few specific questions to put to the Presidents and, perhaps, the Prosecutors of the two Tribunals. First, in today's briefings, we heard no detailed information on measures that the Tribunals have adopted in order to increase the number of countries which have agreed to accept those convicted and sentenced to prison terms, either by signing agreements for the enforcement of sentences or in some other way. The Tribunals are invited to do this in paragraph 8 of resolution 1534 (2004).

We are pleased to note that, as the representative of the United Kingdom has informed us, an agreement has just been signed between the United Kingdom and the ICTY, but we recognize that only a very limited number of countries have so far agreed to have sentences carried out in their respective territories. My country is among them, with respect to the ICTY. We would like to know more about efforts to increase the number of countries which have agreed to enforce sentences in their countries. This is particularly important as the Tribunals move forward with their completion strategies.

My second question again refers to both Tribunals, but more specifically to the ICTY. It relates to measures that might be taken to maximize continuity in the participation of ad litem judges, in particular those who have already been assigned to a Chamber and who are already dealing with specific cases, so as to avoid changes in the composition of the Trial Chambers, which might negatively affect the trying of

cases and hence the completion strategies. Here, I would like to join the representative of the Philippines in welcoming the fact that the election of permanent judges of the ICTY took place well in advance. We consider that that is a positive factor for the completion strategy because there is great continuity among the permanent judges. We wonder whether measures are being considered to ensure that the same will take place for the ad litem judges as well.

Mr. Zinsou (Benin) (*spoke in French*): I too would like to thank the Presidents and the Prosecutors of the two Tribunals for the briefings they have just given us on developments in the implementation of their completion strategies. We note that the two Tribunals are seeking ways to lessen the impact of factors which are holding back progress in their work. That is most encouraging. In particular, we welcome the Tribunals' efforts to speed up procedures through a rational use of available resources. Increasing the number of ad litem judges made available to the ICTR, we think, has helped speed up the work of the Tribunal.

The Tribunals' reports offer a convincing analysis of the number of days of deliberation necessary to complete the cases before them, with estimates based on the nature of the cases, taking into consideration the cases of fugitives and the new tasks and timelines laid down by resolutions 1503 (2003) and 1534 (2004). This gives us a fairly precise idea of the prospects for implementing the completion strategies. All of this shows that the Tribunals have taken to heart the international community's desire to see their work completed on time. We welcome the fact that the Tribunals have fully integrated the completion strategy into their activities.

Nevertheless, in spite of the determination shown by the Tribunals, it would seem that they are faced with genuine time, economic, structural and political constraints; these have introduced a certain amount of uncertainty into their forecasts. The time constraints relate to the internal management of the Tribunals, and we fully trust in the Presidents and Registrars of the Tribunals to overcome them. Rather, I shall discuss the structural and political constraints, because it is in that sphere that action by the Security Council might truly make a difference.

These constraints are linked to specific problems facing the international community. I refer in particular to the recruitment freeze imposed on the Tribunals, which they have asked to be lifted so that they can make use of the services of legal officers in order to face up to the increased workload stemming from the need to speed up their procedures. In this regard, we think that the Security Council working group on the Tribunals should look into this issue in order to find a way to solve the problem.

Another issue is the capacity of national judicial systems that are being asked to take on the secondary cases that the International Tribunals are supposed to refer to them in order to focus on the cases of high-ranking officials bearing major responsibility for crimes falling within international jurisdiction. The seminars organized by the Tribunals are, no doubt, helpful in enhancing the national capacity of the countries concerned; we support those seminars. But the question of safeguarding and respecting international norms should be stringently evaluated. In that connection, the alternative formula of deferring some cases to third-country tribunals should be given all due consideration.

In dealing with this aspect of the completion strategy, what is most to be feared is that cases will be transferred to overburdened and politicized national justice systems. Here, we encourage the Tribunals to continue their discussions with third States which they have determined to meet international norms in order to ensure that accused are given speedy and fair trials.

In our view, political constraints are essentially linked to a lack of cooperation from States that delay handing over to the Tribunal persons who have been accused and who are still at large on their territory. My delegation urgently appeals to the Governments concerned to apprehend those involved as soon as possible and to hand them over to the Tribunals so that they can answer for their acts before international justice. In so doing, they would be making a very valuable contribution to combating impunity and to promoting respect for the rule of law and the principles of humanity necessary for the preservation of international peace and security.

In conclusion, we renew our firm support for the officials of the two Tribunals. We pay tribute to them for all their efforts to ensure that the rule of law prevails.

Mr. Duclos (France) (spoke in French): My delegation too warmly thanks the Presidents and Prosecutors of the International Tribunal for the former

Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) for their briefings today on the implementation of their completion strategies and, more generally, for their endeavours.

France supports both Tribunals. From the outset, we have supported the concept of a completion strategy for their work, which France feels is in the interest of justice and of the victims and, hence, of peace and reconciliation. We therefore, welcome the initial measures taken, with the full respect for the Tribunals' jurisdictions and the independence of their Prosecutors; such respect is clearly essential.

We are also pleased the first requirement — the completion of investigations by the end of the year — can be met. We note with satisfaction that the pace of trials and judgements has been more sustained in both jurisdictions.

Finally, the renewal of the mandates of ICTY judges, recently carried out by the General Assembly, will contribute to the successful conclusion of cases now under way before that Court.

We therefore have reason for satisfaction, and reason to thank the officials of both Tribunals for the efforts they have made since the adoption of Security Council resolutions 1503 (2003) and 1534 (2004). However, we must not overlook a number of difficulties. It seems to us that the role of the Council should be to help resolve those difficulties.

How can we do that? First of all, by reminding States of their obligations. Here, I would like to refer to two obligations, the first of which is quite simply that States must respect their duty to finance the Tribunals. Judge Meron underscored the devastating effect of the recruitment freeze, decided on as a result of the shortfall resulting from unpaid arrears. Judge Møse too alerted us to the critical nature of the present situation.

There is a paradox here: on the one hand, States clearly support the completion strategy; and, on the other hand, the implementation of that strategy has been slowed as a result of delays in payment. We believe that this situation must not continue. We take note of the fact that the Secretary-General will address this problem in the near future. We truly hope that he will find a definitive solution that will halt the departure of qualified officers to other institutions.

In passing, we like others, wonder about the competition among international bodies that has recently arisen, including within the United Nations, with regard to the recruitment of experts. I believe that Ms. Del Ponte referred to this matter. Unfortunately, this competition is detrimental to international justice.

There is a second obligation that it is our duty to recall and to underscore: the obligation of all States, first and foremost Rwanda and the States of the former Yugoslavia, to cooperate fully with the Tribunals. Progress has been noted recently. There have been arrests and surrenders, but assessments are still disturbing, with respect to arresting fugitives and transferring them to The Hague or to Arusha, access to witnesses and the provision of documents.

In the view of France, I would say that, quite simply, the lack of cooperation that has come to the attention of the Security Council, particularly in the case of Serbia and Montenegro and the Republika Srpska of Bosnia and Herzegovina, must end as soon as possible. I would like to clarify in that regard that the Tribunals' missions cannot be completed until the principal accused individuals — I am thinking in particular of Mr. Karadzic, Mr. Mladic, Mr. Gotovina and Mr. Kabuga — have been tried. The timetable established in resolution 1503 (2003) should in no way facilitate impunity.

With respect to Rwanda and the States of the region, resolution 1534 (2004), which must be respected, provides for the enhanced cooperation of those States with the ICTR in investigations related to the Rwandese Patriotic Army in order to bring to justice Mr. Kabuga and all others accused.

With respect to the former Yugoslavia, it is disturbing to note that, 10 years later, effective and well-placed networks continue to protect those responsible for major crimes. It is also disturbing to hear of grave acts of witness intimidation in some regions, such as Kosovo.

I will conclude with two general observations. First, the climate of intimidation to which I have just referred and, in general, the climate in which the Tribunals' authority is challenged oblige us to question the environment in which certain national jurisdictions must try cases involving the low- and mid-level indictees that will be transferred to those jurisdictions by the two Tribunals. We agree with those transfers, but we cannot ignore the climate in which those trials

will take place. For transfers to take place in conditions that comply with international norms, the international community must further mobilize, provide more assistance and undertake greater monitoring. Regional legal cooperation in that context must be strongly encouraged, as must be the establishment of witness protection programmes.

One final comment: the establishment of the ICTY and the ICTR has been a fundamental stage in the history of justice and, in a way, in the history of civilization. From day to day, the Tribunals may encounter frustration and weariness, but we must always bear in mind the ideal we have set for ourselves: to see justice done for the victims and thus contribute to peace-building and reconciliation in regions afflicted by horrific wars and, ultimately, to avoid the repetition of such atrocities. That ideal is more alive and more important than ever. Therefore, the Security Council must spare no effort to ensure that the Tribunals, whose periodic assessment the Council considered today, fully accomplish their mission and thus contribute decisively, as they have done so far, to the development of international criminal justice.

Mr. Karev (Russian Federation) (*spoke in Russian*): First, I congratulate Judge Meron and the current permanent judges of the International Criminal Tribunal for the Former Yugoslavia (ICTY) on their re-election to new terms, as well as the two new permanent judges of the ICTY. The results of the elections show that the Member States of the United Nations have an understanding of the wishes of the ICTY judges. I also express our gratitude to the Presidents and the Prosecutors of both Tribunals for their extremely comprehensive briefings on the annual reports.

The attention the Security Council has given to the activities of the Tribunals, including consideration of the implementation of the completion of strategies for their work pursuant to resolution 1534 (2004), is yielding positive results. In our assessment, over the past year both Tribunals have clearly intensified their implementation of the completion strategies as set out in resolutions 1503 (2003) and 1534 (2004). Internal reforms are under way to enhance effectiveness and to speed up the handling of cases. Efforts are being made to strengthen the capacities of the court systems of the relevant States, with a view to subsequently transferring to them for prosecution the mid- and low-level leaders responsible for the commission of crimes within the jurisdiction of the ICTY and the ICTR. We welcome the Tribunals' efforts and the practical steps taken to transfer cases to national courts.

As previously noted, one of the key conditions for successful implementation of the completion strategies for the work of the Tribunals is ensuring States' full cooperation with the Tribunals. That does not involve just the arrest and transfer to the Tribunal of indicted individuals. It is also important to ensure compliance with all State obligations stemming from the Statutes of the Tribunals and the relevant Security Council resolutions, including granting access to witnesses, records and other evidence of decisive importance.

We cannot fail to express concern at the outstanding problems related to the financing of the work of the Tribunals. As was pointed out by Judge Meron, this year Russia paid in full its assessment to the ICTY. We owe no debts to the Tribunal. The Russian Federation calls upon other States to follow that example. The significant gap between the approved budget and Member States' payments of assessed contributions is becoming a serious hindrance to implementation of the completion strategies for the activities of the ICTY and the ICTR by the deadlines set out in resolutions 1503 (2003) and 1534 (2004), as has been mentioned by most Council members.

In conclusion, I should to assure the Presidents of the Tribunals that it is the view of the Russian Federation that the successful implementation of the Tribunals' completion strategies means that all of those indicted will be tried. All those accused must be tried.

Mr. Motoc (Romania): I would first like to thank the Presidents of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), Judge Meron and Judge Møse, and Prosecutors Carla Del Ponte and Hassan Bubacar Jallow, for their highly informative presentations. We appreciate the thorough written reports submitted to us on issues of continuing interest to the Security Council and to this delegation.

I am also honoured to acknowledge with appreciation the presence in the Council of the Foreign Minister of Croatia, Mr. Miomir Zuzul, and of the Minister of Public Administration and Local Self-Government of Serbia and Montenegro, Mr. Zoran Loncar.

I take this opportunity to extend my delegation's warmest congratulations to Judge Meron and to the other candidates who have been recently either elected or re-elected to the high office of ICTY judge. We trust that the outcome of these latest elections will be beneficial in meeting the terms of the completion strategy.

Since many of the aspects related to the activities of the two Tribunals under scrutiny today were taken up by this delegation at the June 29 open briefing, I will confine myself to some brief additional comments.

I wish first to make a remark of a general nature on the work of the ICTY and its Prosecutor. Romania looks forward to the day when all concerned countries of the western Balkans will have cleared up the remaining issues related to their cooperation with The Hague-based jurisdiction. They must be able not only to shut the door with respect to past wounds but also to take full advantage of existing prospects for their participation in the European and Euro-Atlantic integrative endeavour. As a country of the wider region, Romania will do its utmost to bring those prospects within closer reach.

Secondly, the re-election of 12 of the 14 judges serving on the ICTY, positive as it may be, will not by itself solve all the problems related to the implementation of the completion strategy. Several other factors come into play in that respect: full cooperation by all relevant countries, strict observance of the seniority criterion, the transfer of cases involving medium- and low-level accused to national jurisdictions, ensuring the availability of the necessary financial resources, and so on.

Thirdly, cooperation — especially in the form of arresting and handing over the principal fugitives, facilitating access to evidence and granting immunity waivers to enable witnesses to provide statements or testify before the Tribunal — is by far the most important element in that equation. We therefore strongly encourage all States that still need to meet their obligations in that respect to do their utmost in that regard. Nonetheless, a survey of the reasons behind insufficient or unsatisfactory cooperation by certain States would undoubtedly reveal a number of factors affecting their capacity to do so, which should also be taken into account.

Fourthly, we have noted the institution of judicial proceedings, five years after the end of the conflict in Kosovo, in what appears to constitute the first case brought against alleged perpetrators from that province. Yet it appears from the report submitted by the ICTY that none of the three individuals involved in that case is at the decision-making level. It might be useful to get some indications from the ICTY as to the main lines of approach that are intended to be taken in that area. Our consistent stand in that regard remains that all those suspected of having committed crimes within the jurisdiction of the Tribunal should be brought to justice, as that would significantly contribute to an even greater level of acceptance of ICTY decisions.

Fifthly, we reiterate our view that, while an increased number of guilty pleas entered by those accused at both Tribunals would undoubtedly facilitate compliance with the terms of the completion strategies, efforts to reach that objective should not compromise internationally recognized principles of due process and fairness or the rights of either the accused or the victims.

Sixthly, we note with concern the information provided in the report by the ICTR to the effect that 17 indictees and 16 suspects are still at large. In many of those cases, there is no reasonable expectation that the persons in question will ever be apprehended and brought to justice.

We are also concerned at the fact that, according to some assessments by humanitarian non-governmental organizations (NGOs), the ICTR has thus far focussed mostly, if not exclusively, on persons belonging to only one party to the 1994 conflict, although a Commission of Experts established by the Security Council concluded that individuals on both sides had perpetrated serious breaches of international humanitarian law and crimes against humanity. It would be useful to learn more about how the ICTR intends to deal in future with those issues and to find out what approach is envisaged by the Tribunal in that respect.

Finally, I would like to pick up on an idea that was put forward by the representative of the Republic of Korea during the debate on this subject in the General Assembly and to express our support for the proposal concerning the establishment of a mechanism for consultations among all judicial bodies put in place with United Nations assistance. Sharing experiences and information on the activities of all those courts

might prove highly useful in efforts to avoid the fragmentation of jurisprudence on emerging international criminal law.

Mr. Khalid (Pakistan): We would like first of all to congratulate the newly elected and re-elected judges of the International Criminal Tribunal for the former Yugoslavia (ICTY) after what became a hard-fought election.

Pakistan attaches great importance to the role played by the International Tribunals set up by the United Nations to prosecute crimes against humanity under the genocide conventions and international humanitarian law. The cornerstone of our policy is to promote respect for and compliance with international law.

The Secretary-General aptly pointed out, in his recent statement to the General Assembly, that

> "Rule of law as a mere concept is not enough. Laws must be put into practice and permeate the fabric of our lives." (*see A/59/PV.3*)

The two Tribunals are doing exemplary work in the field of the international rule of law and justice, which we fully support. We strongly believe that there should be no impunity for crimes against humanity, including genocide. We support all efforts aimed at increasing the efficiency of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda (ICTR). We hope that these efforts will help in the fulfilment of the completion strategy of the Tribunals.

We are grateful to the Presidents and the Prosecutors of the International Criminal Tribunals for the former Yugoslavia and for Rwanda for their written assessments and briefings today to the Security Council, pursuant to resolution 1534 (2004), and we appreciate the efforts of the two Tribunals made in pursuance of the completion strategy, as reiterated in resolution 1534 (2004). We are heartened to note that the ICTY will be able to complete all investigations by the end of 2004 and all trial work at first instance by the end of 2008, in accordance with the completion strategy.

We have also noted that by 2008 the ICTR may be able to complete trials and judgements in the range of 65 to 70 per cent, depending on the progress of present and future trials. We have also taken note of other issues that might affect the completion strategy, such as retaining old and hiring new staff, as well as the need for all States to cooperate fully with the two Tribunals. We believe that the arrest and prosecution of indictees at large, especially those indicted for genocide, is equally important for the completion of work of the two Tribunals.

The transfer of cases involving intermediate and low-rank accused to competent national jurisdictions would help the two Tribunals to concentrate on the most senior leaders suspected of being most responsible for crimes within their jurisdiction. In this regard, we have noted that the Special Chamber of the State Court of Bosnia and Herzegovina will soon be ready to accept transferred cases of lower- and intermediate-level officials.

The ICTY and the ICTR are performing important work in the context of the international rule of law and justice. To borrow a phrase from the ICTY assessments, the Tribunals continue to send a powerful message of responsibility and accountability. They need the support of the international community to achieve their completion strategies. We stand ready to contribute to the efforts of the two Tribunals to fulfil their completion strategies.

Mr. Donoso (Chile) (*spoke in Spanish*): We would like to thank the Presidents and Prosecutors of the International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) for their briefings. The assessment report provided by the President of the ICTY in accordance with resolution 1534 (2004) contains a detailed report of the progress achieved on the completion strategy. The report reveals progress in trials at first and second instance and in investigations by the Prosecutor's Office.

We note with concern that there is lack of cooperation on the part of States of the former Yugoslavia and that this continues to make implementation of the completion strategy difficult. We believe that the Security Council must draw the appropriate conclusions so that the resultant impunity can be avoided.

The completion strategy calls for a War Crimes Chamber to be established in Bosnia and Herzegovina as soon as possible, as provided in resolution 1503 (2003). In that connection, we are pleased to note that the report indicates that in January of 2005 that Chamber will begin work. We agree with the

assessment that the work of the new Chambers requires considerable supervision to ensure that international standards are complied with. In addition, we believe that it is essential to ensure the appearance before the ICTY of Radovan Karadzic, Radko Mladic and Ante Godovina, as called for by Security Council resolutions. It appears that the cooperation of the States of the former Yugoslavia is key in this area.

With respect to the ICTR, we are pleased to note that this jurisdictional body is now in a position to conclude all trials by 2008, as required by resolution 1503 (2003). We further believe that efforts should be redoubled so that Felicien Kabuga can be brought before the Tribunal.

In conclusion, I wish to we reiterate the support of my country for the completion strategies of both Tribunals and for the efforts that are under way to ensure that that is accomplished.

Mr. Danforth (United States of America): I will now speak in my national capacity. The United States remains strongly committed to supporting the United Nations International Criminal Tribunals for the Former Yugoslavia and Rwanda and welcomes the reports provided by both Tribunals. We must all work together to ensure success of the Security Council-endorsed completion strategies of both Tribunals to successfully complete trials by 2008 and appeals by 2010.

Serbia and Montenegro, Bosnia and Herzegovina and Croatia must fill their legal obligations to cooperate fully with the ICTY by apprehending all fugitive indictees within their territories and transferring them to The Hague. In this regard, we note that the Republika Srpska has failed to render a single fugitive indictee to the Tribunal, and the cooperation of Serbia and Montenegro has deteriorated to a standstill in the past twelve months.

The United States and others have made clear that upholding international obligations to the ICTY is a prerequisite for further integration into the European-Atlantic community. Serbia and Montenegro's lack of cooperation with the ICTY also undermines the confidence of the international community that it is willing and able to prosecute war crimes fairly and effectively. Until Serbia meets its cooperation obligations, we do not see domestic trials of ICTY indictees in Serbia as a realistic option. We call on all authorities in Serbia, especially the Prime Minister as head of the Government, to act immediately to apprehend and render to The Hague all fugitives hiding in the country. We continue to support efforts to help create the capacity for credible domestic trials of low- and mid-level war crime cases throughout the region. We note the significant work being done in Sarajevo in this regard and urge other States to contribute to this court, either through direct financial assistance or in-kind contributions.

With regard to the ICTR, first we note and commend the increased pace of trials under the leadership of its President. We urge all States, especially the Democratic Republic of the Congo, the Republic of the Congo and Kenya, to fulfil their international obligations to apprehend and transfer to the Tribunal all persons indicted for war crimes by the ICTR found within their countries. These fugitive indictees continue to incite conflict in the Great Lake region and must be actively pursued and apprehended, as called for repeatedly by the Security Council.

The United States has completed the transfer of all of its 2004 assessed contributions for the ICTY and ICTR to the United Nations and is committed to significant financial and diplomatic support to both Tribunals.

Before resuming my function as President, I would like to direct two questions to the President and Prosecutor of the Rwanda Tribunal. I would appreciate the President's assessment of Rwanda's capacity to try lower-ranking defendants. I would also appreciate the Prosecutor's assessment of Rwanda's cooperation with his Office, particularly with regard to investigations of alleged offences by the Rwandan People's Army.

I now resume my function as President of the Council.

I would like to proceed as follows. I propose that we take a 10-minute break now, and when we resume the panel will be given an opportunity to respond, beginning with Judge Meron. We will then hear from the representatives of the four countries that have requested to participate.

The meeting was suspended at 1 p.m. and resumed at 1.10 p.m.

The President: I give the floor to Judge Meron to answer questions.

Judge Meron: I would like first to correct one of my earlier comments. Since we have just started the *Limaj* case at The Hague, there have in the past few days been not four, but five, ongoing trials, in addition to the two cases that are in the judgement-writing stage.

I will begin by responding to the questions put by the representative of the Philippines. He asked why the financial problem exists and why the financial freeze continues. The freeze imposed by the Secretariat in, I believe, early May 2004, resulted from the fact that many countries — far too many countries — were in arrears with regard to their past and current budget obligations to the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

During the past few weeks I have spent a lot of my time approaching individual Governments and urging them to pay their debts as soon as possible — right away, if possible. That fund-raising campaign has met with significant success. We have also approached smaller countries, which owe less money to the Tribunal but whose support is, I think, as important morally and politically as that of the major contributors. I am happy to report that in terms of arrears, the financial situation of the Tribunal today is better than it was in, say, mid-November one year ago.

I believe that we have reached a stage at which continuing the freeze would cause havoc in the very efficient and very intensive work that we are trying to accomplish in the Tribunal. It would result in much greater expense. The leadership of my Tribunal — the Prosecutor, the Registrar and I — have appealed to the Secretary-General to reconsider the freeze. Given the better financial situation, I hope that the freeze will be — as it should be — lifted soon.

I was asked by the representative of the Philippines when we can expect cases of intermediate or low-level defendants to be transferred to the area. As I mentioned earlier, six motions presented by the Prosecutor are already before the Trial Chamber, and she told us today that she will be presenting additional motions. Under our rules of procedure, the determination as to whether a case should be sent on for trial to competent national jurisdictions is in the hands of the Trial Chamber. I would prefer not to second-guess my judges, but I would like to say that I am quite hopeful that in early 2005 we will see some movement of cases — certainly to the Sarajevo special chamber, but not only there. So we are really on track. The Trial Chamber is also considering those motions that have been submitted, and I am sure we will, equally expeditiously, consider motions to be submitted in the future.

The representative of Spain asked what we could do with regard to ad litem judges in order to avoid disruptions to trials. As the Council knows, the mandate of all of the ad litem judges will expire in June 2005. As I mentioned in my earlier remarks today, I have already written to the Legal Counsel of the Secretary-General asking him to do what is necessary in order to advance elections of a new group — a new slate — of ad litem judges as early as possible in 2005. I am confident that the Legal Counsel will consider that request soon.

In order to avoid disruptions, the mandates of individual ad litem judges who will be involved in trials that will not have been completed by June 2005 will also need to be extended, and the ICTY will be approaching the Security Council in due course to request extensions for individual judges.

I would like to draw the attention of the Council to one policy question that is not for the judges but for the Council to decide on. This relates to whether it would not be wise to lift the ban that exists under the current statute on the re-election of ad litem judges. That is a question of policy that is for the Council to consider.

Spain also asked for more information regarding States which have concluded — or with which we are in contact concerning — additional agreements on the enforcement of sentences. We now have 10 agreements of that kind with 10 countries. But as the number of people convicted grows as our docket becomes more and more impressive, we need more States to conclude such agreements with us. In this context, we also need more States to conclude agreements with us on the relocation of witnesses. Protection is needed because of the testimony given — sometimes very bravely — during our proceedings.

Our Registrar is therefore very actively involved in trying to enlarge the circle of States with whom we have agreements, and I would like to make a personal appeal to Governments to be sympathetic towards those requests and approaches, because we need that. It was the representative of Spain who asked that

question, and I would like particularly to salute Spain not only for having such an agreement with us, but for the fact that four convicted persons are now serving their sentences in Spain. We understand the cost; we understand the burden; we understand the sacrifice; and we are extremely grateful.

France made the point that the transfer of cases to national jurisdictions should occur only where we can expect fair trials — trials without intimidation or ethnic or religious bias. I would like to assure the Government of France that the leadership of the Tribunal fully shares those views. We have rules of procedure that in fact make the transfer of cases to a particular jurisdiction dependent upon fairness and due process.

I would now like to conclude by making a few general comments. First, allow me to say how grateful I am to the permanent members and to the entire Security Council for the overarching message of support for the work we are now doing to try to end impunity, establish the principle of international criminal justice in a very concrete and credible way, and foster justice and reconciliation in the former Yugoslavia.

I also heard comments suggesting that the completion strategy should not be an excuse to create an impunity gap. That is very much our belief as well. We are gratified by the acknowledgement of so many members of the Council of the more efficient measures we have adopted and the reforms we have and are continuing to undertake in order to make trials as efficient and as cost-effective as possible, while ensuring that they respect human rights and international due process.

I am also very grateful to all the members of the Council for the concern they have expressed about the continuing freeze that has been imposed upon us, the continuation of which can only be disruptive to the goals of the Security Council and the prospects for the completion strategy.

Finally, with regard to the Security Council's Working Group to review the operation of the Tribunals, which was mentioned by Germany and Spain, I have had the pleasure of working with the Group twice and I very much look forward to working with it in the future. I am sure that I speak on behalf of the Prosecutor and the Registrar when I say that the Group would be very welcome to hold its meetings in The Hague.

The President: I now call on Judge Møse.

Mr. Møse: Let me start by conveying my wholehearted appreciation to all the members of the Council who expressed their strong support for the Tribunals. There is consensus vis-à-vis the two sets of obligations incumbent upon all Member States. First, there is the need to cooperate. Members unanimously stated that all States must apprehend accused persons and facilitate the transport of witnesses and the production of documents, which would certainly be of value to us in our daily work.

The second set of obligations relates to resources. We have again been heartened to hear the unified position of the Council, namely, that it is concerned about the problems we encounter in that connection and with regard to lack of manpower — people leaving us — and the problems caused by the freeze. I think that will also be a very helpful element in future developments. Like President Meron, I have of course been in touch with individual Member States and have drawn their attention to the problems associated with the economic difficulties. We have had some results, but the possibilities will be greater when the Security Council lends its full authority to financial requests.

Turning to the matter of agreements on sentences, which was raised by the representative of Spain, I simply want to say that our position is exactly the same as that of the International Criminal Tribunal for the Former Yugoslavia. We have six agreements in that regard, but we would certainly welcome more. Thus far, only one State has received all our convicts. But there will be a need for more agreements, and we appreciate any Government's willingness to enter into such arrangements.

Th representatives of the United Kingdom and the United States raised the issue of the transfer of cases to Rwanda and, in particular, the trial readiness of that country. That decision is of course a judicial one — again, I can echo what President Meron said — and it will be for the Trial Chambers designated by the President to make a determination under rule 11 *bis* as to whether transfers should be effected or not. I therefore think that, at this stage, it is better that I not go into too much detail or prejudge the conclusion of an individual Trial Chamber. But I note that, in the light of the rather clear statements made in prominent

circles in Rwanda, there seems to be considerable progress in that country in relation to the death penalty. With regard to due process and the overall situation, that is something we will have to revisit in connection with the judicial context. That the Prosecutor may have additional remarks on that issue, as he is actively pursuing the matter.

The representative of Germany very kindly pointed to the possibility that the Security Council could meet at the seat of the Tribunals at some level. I think that is an excellent idea. Of course, the Council is master of its own procedures and will have to decide upon the level at which it would wish to go to Arusha. Let me simply reiterate the invitation I extended to the Council on 29 June 2004, namely, that all members of the Council are wholeheartedly welcome in order to obtain first-hand observations of daily life in Arusha and of our commitment to carry out our task.

I think that brings me to the end of the questions and observations that need to be addressed at this stage. Let me simply say that the year 2005 will be an important one for the Tribunal and that I look forward to reporting about the progress made at the next two occasions.

The President: I now call on Prosecutor Del Ponte.

Ms. Del Ponte (*spoke in French*): I would like to associate myself with President Meron's words of thanks to the President and members of the Security Council for their ongoing support. We certainly hope that 2005 will be a successful year, especially in connection with the arrests of persons with primary responsibility, especially as regards the Srebrenica genocide. I very much hope, 10 years after the commission of that crime, that we will finally be able to apprehend Mr. Karadzić and Mr. Mladić and begin their trials.

The President: I now call on Prosecutor Jallow.

Mr. Jallow: I would also like to thank the President and the members of the Council for their support for the Tribunals. I too have been heartened by the responses we have heard concerning some of the specific issues and difficulties we have raised. I would like to respond to two issues that have been raised.

I would first like to address the issue of the investigations into the Rwandese Patriotic Front (RPF), which was raised by the representatives of Romania, France and the United States. We are deeply aware of the fact that the investigation of those allegations falls within our mandate and our duty at the Tribunal. We are also conscious that the Security Council is currently concerned about this particular issue. Investigations have been conducted over a period of many years.

At this stage, as I mentioned to counsellors at the last meeting, we are not conducting any more investigations, but we have started a process of assessing what material has been gathered over the years in order for me to be able to determine what cases exist — and against whom — with regard to those particular allegations of Rwandese Patriotic Front (RPF) involvement. I have indicated to the Rwanda authorities themselves that I am assessing the material at the moment and will get back to them to advise them of the outcome of my assessment in due course. This will hopefully take place early in the year. That is the situation as far as the RPF is concerned.

On the issue of the transfers, the assumption by the Ambassador of the United Kingdom is quite accurate, that out of the 41 persons or dossiers that are earmarked for possible transfer to national jurisdiction, the bulk would be directed to Rwanda, subject to the conditions being satisfied for a transfer to be effected by the Trial Chamber. Under the rules, the Trial Chamber will make an order for transfer only if it is satisfied that the person will have the benefit of a fair trial in the country concerned and would not be subject to greater penalty than he would have been subjected to if he had been tried at the Tribunal. This means, for instance, that the death penalty would be a bar to any possible transfer.

The bulk of the transfers are identified for Rwanda, largely for two reasons. First, it is the place where the offences were committed, and secondly, it is not proving easy to find other candidate countries that are willing to accept these cases or that are able to accept them without additional resources being provided. Resources may have to be provided even in the case of Rwanda, particularly with regard to the establishment of a court that will handle the cases when they are transferred. I have already initiated discussions with Rwandan authorities and indicated to them what measures need to be taken on the ground in Rwanda in order to enable the Prosecutor to submit an application to the Trial Chambers for an order for transfer.

Among the measures, of course, is the fact that we need to have a court in place in Rwanda that is effective and operational and that can handle the cases. We need to have an appropriate legal regime that will guarantee a fair trial and will also cover the offences that are within the jurisdiction of the Tribunal. We also need to have legislation in place that will exclude the application of the death penalty to any of those persons, if they were to be convicted after transfer. I believe those issues are receiving the close attention of the Government of Rwanda at the moment. As the President has indicated, we believe the issue of the death penalty should no longer pose a problem. There has been an indication that it would be excluded in relation to these cases.

The Tribunal itself, of course, cannot provide resources to any country that wishes to take these cases through transfer. We do not have the resources. What we can provide, however, is training for their staff. We have a number of Rwandan staff in the Office of the Prosecutor and in other branches of the Tribunal. This staff will be able to return to Rwanda and help there with the handling of the cases. We have also indicated that we are willing to take, on secondment, their own prosecutorial staff in my Office over a period of time and then release them to subsequently assist with the handling of these cases. That is the situation at the moment. Once the Rwandan side has attended to these measures, we should then be able to proceed to make the necessary applications in early 2005 for the Trial Chambers to decide on the question of transfer.

I believe these were the two issues that were raised specifically for my attention. I would like to express my gratitude for your support and cooperation, Mr. President, as well as for the support and cooperation of all the members of the Council.

The President: I would like to thank, on behalf of all the members of the Council, both Presidents and both Prosecutors for their presentations today and their excellent work.

I now call on the Minister for Foreign Affairs of Croatia, whom I invite to take a seat at the Council table.

Mr. Žužul (Croatia): I would like to thank the President of the Tribunal, as well as the Chief Prosecutor, for their very noble work and for their annual reports on the work that the International Tribunal for the Former Yugoslavia (ICTY) has accomplished in the past year. I would also like, on behalf of my Government, to express our satisfaction and to congratulate President Meron on his re-election.

Allow me to now outline Croatia's position on this issue and explain what we have achieved thus far in our cooperation with the Tribunal.

I wish to stress the point that Croatia was one of the leading proponents for establishing the ICTY. We have held from the very beginning that the prosecution of war crimes is fundamental to establishing lasting peace in our part of Europe. Croatia also believes that bringing the perpetrators of war crimes to justice is a precondition for confidence-building in the region. I think there is full agreement on these points. I do, however, wish to make a few brief remarks on the general political circumstances that surrounded the key events in the 1990s. These remarks are directly relevant to the outstanding issues that still exist today.

First of all, I must reiterate that Croatia was attacked and subsequently partly occupied by the invading Yugoslav army, which was firmly under the control of Slobodan Milošević. The fact that this aggression was conducted within internationally recognized borders and on the territory of the Republic of Croatia has been reflected in a large number of General Assembly and Security Council resolutions, including Council resolutions 815 (1993), 871 (1993), 947 (1994), 981 (1995) and 1023 (1995). Allow me to quote from the second and third preambular paragraphs of just one resolution, General Assembly resolution 49/43 of 9 December 1994, at the time when Croatia was still trying to find a peaceful and negotiated solution:

> "The General Assembly ...
>
> "Stressing the importance of efforts to restore peace in the entire territory of the Republic of Croatia as well as to preserve its territorial integrity within the internationally recognized borders, and emphasizing in this regard that the territories comprising the United Nations Protected Areas are integral parts of the territory of the Republic of Croatia,
>
> "Alarmed and concerned by the fact that the ongoing situation in the Serbian-controlled parts of Croatia is de facto allowing and promoting a state of occupation of parts of the sovereign Croatian territory, and thus seriously jeopardizing

the sovereignty and territorial integrity of the Republic of Croatia".

Our people did not want a bloody conflict on Croatian territory, but were confronted with armed aggression, which had to be resisted. Our Government had the solemn duty to protect its citizens.

Secondly, the Croatian Government invested great efforts in reaching a peaceful solution with the local Serb authorities. I know this firsthand, as I personally participated in negotiations during this period. In hindsight, I feel more than confident stating that Croatia exerted great restraint and demonstrated true patience in searching for a negotiated settlement. In the end, we had no choice but to liberate our occupied territory by military force. The former United States Ambassador to Croatia, Peter Galbraith, in his testimony during the Milošević trial, openly blamed the local Serb authorities for rejecting a negotiated settlement.

In order to fully understand Croatia's decision to take military action, one must take into account the situation in neighbouring Bosnia and Herzegovina, which was, in fact, quickly deteriorating at the time. I will remind you that in the summer of 1995, the Serbs had occupied the United Nations-protected enclaves of Zepa and Srebrenica and were attacking Gorazde. Following the brutal massacre at Srebrenica, it was clear that decisive military action was the only way to counter the Serb onslaught, and the world simply could not allow Biha to fall into the hands of Ratko Mladić.

I am making these points in order to emphasize once again the legitimacy of Croatia's decisions at the time. I think it is of central importance that not only we today, but also future generations, have a clear understanding of the events I have briefly described. The past must not be forgotten, and, more important, it must be properly assessed and understood.

However, the fact remains that crimes were committed, and justice demands that the perpetrators be properly punished. My Government insists on the individualization of responsibility for the criminal acts that have been committed. We understand that the ICTY has a central role in prosecuting those crimes, and that is precisely why we strongly supported the establishment of the Tribunal from the very beginning. Croatia views cooperation generally as a matter of enforcing the rule of law and, more specifically, as a matter of implementing the relevant Security Council resolutions, the Statute of the ICTY and our own constitutional law, which mandates compliance with all Tribunal requests.

Now I would like to address the current state of affairs in our cooperation with the ICTY. The facts clearly indicate that the Croatian Government has been fulfilling its commitment to comply with the requests of the Tribunal. In March of this year, two of Croatia's generals — Generals Markac and Cermak — surrendered to stand trial in The Hague. We also secured the handover of six indicted Bosnian Croats, who subsequently appeared before the Tribunal and are now waiting for their trials to begin. Most recently, the Bosnian Croat indictee Miroslav Bralo surrendered to the ICTY authorities.

Croatia's position has been clear and unequivocal: all of our citizens are obliged to cooperate fully with the Tribunal. That includes General Gotovina, who remains at large. On this point, I want to stress that my Government is in no way evading its own responsibility and that we have, in fact, repeatedly appealed to General Gotovina to appear before the court.

Prime Minister Sanader recently stated once again that The Hague is the only location where one's guilt or innocence can be established. I want to re-emphasize the point that this is the only outstanding issue that exists between Croatia and the ICTY.

Both President Meron and the Chief Prosecutor Del Ponte stated that Croatia's cooperation with the Tribunal is good and that the case of General Gotovina remains the only obstacle to our full cooperation with it. Allow me once again to express, on behalf of the Croatian Government, our commitment to cooperate fully with the ICTY authorities and with the international community in resolving this remaining issue. We are determined to fulfil our responsibilities as a mature democracy and will continue to insist that every citizen, without exception, comply with the country's laws. In the end, those who are found guilty must be punished, regardless of their ethnic background.

Croatia is investing great efforts in preparing its national courts to assume cases involving war crimes. I am especially pleased that President Meron has recognized the efforts we have made in that regard. This process has been developing in close cooperation with the ICTY and is designed to prepare judiciary

officials to prosecute war-crimes cases in a professional and unbiased manner. It is not widely known that since 1992 the Croatian judiciary has independently conducted nearly 1,500 war-crime cases — 1,491, to be exact. The case involving Croatian General Mirko Norac — who was sentenced to 12 years in prison — demonstrated that our courts are able to act both professionally and in an unbiased manner.

Croatia fully supports the Tribunal's completion strategy as outlined in Security Council resolutions 1503 (2003) and 1534 (2004). We understand that that is a priority of the Security Council, and we are prepared to help expedite the work of the ICTY. The referral of cases to competent national jurisdictions is one of the pillars of the completion strategy. The Croatian Ministry of Justice, Administration and Local Self-Government is conducting a programme, with the generous support of the Royal Dutch Government, that is designed to train legal experts in prosecuting war-crimes cases. Most recently, a working session was held on 29 and 30 October in cooperation with the ICTY Registry.

Croatia now believes it is prepared to assume part of the Tribunal's work. We will continue to pursue a dialogue with the ICTY on that issue and cooperate in the field of training and technical assistance. In cases that have already been conducted, evidentiary material obtained by the ICTY has been used by Croatian national courts. We are pleased with the cooperation we have established with the Office of the Prosecutor, and we intend to intensify our regular communication with the authorities in The Hague.

It has been stated on many occasions that the Tribunal must perform the role of enforcer of justice and protector of memory. We must ensure that future generations will be able to distinguish between victim and aggressor, but also between a nation's right to self defence and the individual crimes that may have been committed. As I stated earlier, those found guilty must be punished, regardless of their ethnic background.

We also have an obligation to resolve the most difficult issues from our past. No nation can expect to build a better future if it is not capable of assuming responsibility for its own actions. I assure the Council that Croatia is ready to do its part, and that is why we are a credible candidate for European Union membership.

In conclusion, let me reiterate that Croatia is fully aware of the importance of cooperation with the ICTY. We will continue to fulfil our obligations to the best of our ability.

The President: I now call on the Minister of Public Administration and Local Self-Government of the Republic of Serbia, on behalf of Serbia and Montenegro. I invite him to take a seat at the Council table and to make his statement.

Mr. Loncar (Serbia and Montenegro) (*spoke in Serbian; English text provided by the delegation*): In my capacity as a member of Serbia and Montenegro's National Council for Cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY), I would like to thank the Presidents and the Prosecutors of the ICTY and of the International Criminal Tribunal for Rwanda (ICTR) for their detailed briefings. As a member of the National Council, I would also like to express my appreciation for the opportunity to present to the Security Council the positions of Serbia and Montenegro concerning the issue on today's agenda.

First of all, I would like to reiterate that Serbia and Montenegro, as a Member State of the United Nations, fully accepts its obligation to cooperate with the ICTY. In that connection, the State Union of Serbia and Montenegro and the Government of the Republic of Serbia have been undertaking constant efforts to fully comply with the obligation of Serbia and Montenegro to cooperate with the Tribunal. In my statement to the General Assembly on 15 November 2004, I presented concrete examples of that cooperation.

In the meetings between the Tribunal's Chief Prosecutor, Carla Del Ponte, and the highest-ranking officials of the State Union of Serbia and Montenegro and of the Republic of Serbia during her visit to Belgrade on 4 October 2004, mutual interest was expressed in enhanced and even more successful cooperation between our country and the Tribunal.

Following the early parliamentary and presidential elections whereby the institution-building process in Serbia was completed, a newly formed National Council for Cooperation with the ICTY became operational in July this year. Since then, 53 persons have been granted waivers with respect to their obligation to keep State, military or official secrets. All requests submitted by the Office of the Prosecutor by

15 September 2004 have been duly approved; the new requests are being processed and addressed in a more efficient manner.

Moreover, there is another form of ongoing cooperation with the ICTY, concerning the access of the Office of the Prosecutor to written evidence and to archives. A large number of the requested documents — including those marked as containing State or military secrets from meetings of the Supreme Defence Council, the Parliament of the Republic of Serbia, the Ministry of Defence and the Ministry of Interior, inter alia — have been transmitted to the Office of the Prosecutor. Since the establishment of the new National Council, as many as 21 such requests have been granted.

The competent authorities have been undertaking a series of concrete measures aimed at tracking down the indicted persons who are, according to the information of the Office of the Prosecutor, at large in our country.

As for the case involving Ratko Mladic, accused of the crimes in Srebrenica, our authorities are sparing no effort to detect his whereabouts. Thus far a number of operations have been carried out, but despite thorough and credible identity and residence checks, so far there has been not a single piece of reliable proof that Ratko Mladic is indeed within the territory of the State Union of Serbia and Montenegro. We are determined to continue to take all necessary steps to credibly investigate whether Mladic is hiding within our territory.

I would like to take this opportunity as well to recall that since January 2003 as many as 24 indicted persons from the territory of Serbia and Montenegro have been transferred to the custody of the Tribunal. It should be noted in particular that on 9 October 2004, following the visit of the Chief Prosecutor Carla Del Ponte to Belgrade, Colonel Ljubisa Beara of the Army of Republika Srpska, who was indicted in connection with Srebrenica, surrendered to the Serbian authorities. He was immediately transferred to the Tribunal, accompanied by the Minister of Justice of the Republic of Serbia. We consider that this act may be viewed as a step in the right direction in fulfilling our obligation to cooperate and as an appropriate way to honour the remaining obligations of Serbia and Montenegro to the Tribunal.

After the surrender of Colonel Beara, the consciousness of the general public was raised regarding the idea that voluntary surrender is the way to effectively carry out our cooperation with The Hague Tribunal. That would enable our country to move forward along the road to European integration and to intensify its cooperation with the international community, to which most of the citizens of Serbia and Montenegro are actually committed. All State officials reach out to the public on a regular basis in an effort to explain that the State must not be held hostage to The Hague indictees and that their surrender would contribute to the country's stability.

I would like to emphasize in particular the comprehensive cooperation by the Government and the State authorities of the Republic of Montenegro and their full commitment to fulfilling all obligations arising from that cooperation. Serbia and Montenegro will discharge all of its financial obligations towards the Tribunal in the very near future.

The Government of Serbia has also launched an investigation concerning the disappearance of Goran Hadzic, who was indicted by the Tribunal. The investigation should provide an answer as to how a leak of classified information became possible within the State authorities, thus enabling Hadzic to flee. My Government is committed to fully investigating and resolving this case and to punishing those responsible.

I would like to remind the Council that the trial for the "Ovcara crime" is currently being conducted in the Belgrade court. The relevant international actors have qualified the proceedings as highly professional and in line with internationally recognized standards. The Chief Prosecutor of the Tribunal, Carla Del Ponte, also positively assessed the proceedings conducted by the Prosecutor's Office and the Belgrade court, as well as their capability to conduct other trials. That was the reason that the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY) transferred another case to the jurisdiction of the Belgrade Prosecutor's Office, which is currently conducting a proper investigation.

Serbia and Montenegro is aware of its responsibilities concerning the Tribunal's completion strategy. In that respect, various efforts have been made to improve the capacity of local courts, prosecutors' offices and legal professionals in order to fully comply with international standards. In that

regard, the Government of Serbia last week adopted draft legislation for a witness protection program and a law which will allow domestic courts to recognize evidence and information gathered by international courts. All of this proves that war crimes trials may be, and increasingly have to be, conducted before domestic courts.

I would like to inform you that on 22 November there was a meeting between the President and Prime Minister of the Republic of Serbia and their counterparts from Republika Srpska and most of their attention was devoted precisely to the issue of cooperation with the Tribunal. It was concluded that vigorous and resolute efforts should be undertaken to resolve the remaining issues in this field.

The government of the Republic of Serbia and all relevant political actors in Serbia and in the State Union of Serbia and Montenegro are absolutely aware of the obligation to fully cooperate with the Tribunal. There is also full agreement among them on the need to pursue that cooperation. Consequently, new steps will be taken to fulfil our obligations to the international community, and I am convinced that they will bring concrete results very soon, which will testify to our cooperation with the Tribunal. Most important, I would like to emphasize that the Government of Serbia and Montenegro is determined to take new steps, with a view to achieving concrete results that will testify to its cooperation with the Tribunal.

The President: I now call on the representative of Rwanda, whom I invite to take a seat at the Council table and to make his statement.

Mr. Ngoga (Rwanda): Mr. President, my delegation wishes to thank you for calling this meeting at which the Council heard reports from the Presidents and the Prosecutors of the International Criminal Tribunals for Rwanda and for the former Yugoslavia. My delegation will confine its remarks to the report of the International Criminal Tribunal for Rwanda (ICTR).

First of all, we would like to congratulate the President of the ICTR, Judge Erik Møse, and the Prosecutor, Mr. Hassan Bubacar Jallow and to thank them for their reports.

This November, it is 10 years since the Security Council adopted resolution 995 (1994), establishing the ICTR. This is the right time for us to take stock and to make an assessment of the Tribunal's performance so far. We recognize and commend the Tribunal for the work done this year. We hope that the Tribunal will improve its efficiency and effectiveness and will identify areas for further improvement. Continuous improvement is particularly important given the relatively short period of time remaining for the ICTR to complete its mandate.

Originally, the Office of the Prosecutor had identified more than 300 "big fish" for prosecution before the Tribunal completed its mandate. We note that today the workload of the Office of the Prosecutor has been reduced from the initial number of "big fish" to a bare minimum. As a result, we now see that such notorious suspects as Callixte Mbarushimana are no longer being targeted for prosecution. Instead, he is being compensated for lost income from his United Nations employment. My Government considers this to be not only a slap in the face of the international community, but also a mockery of justice. We urge the Tribunal again to consider bringing that individual to justice.

Based on the numbers provided by the Tribunal, we note that by the end of its mandate the Tribunal will have completed its work on only 25.6 per cent of the number of suspects originally considered to be "big fish" by the Tribunal itself. But for even that work to be completed, the Tribunal will have to ensure that all trials and appeals currently under way are expedited and completed. The Tribunal must ensure that it commences proceedings on all cases not yet begun. It has to ensure that all indictees still at large are arrested and prosecution started. The Tribunal has to rationalize its internal management systems, although there has been tremendous improvement in organization in recent days. All States must cooperate fully with the Tribunal.

We are concerned that late or non-payment of assessed contributions of Member States to the Tribunal has resulted in serious financial difficulties. This has resulted in recruitment freezes and consequently slowed down the Tribunal's work. This slowdown comes at a time when we expect the Tribunal to be working steadily towards implementing its completion strategy. It is imperative that Member States make their contributions on time, in full and without conditions, if we are to realize the goals outlined in the completion strategy.

Rwanda is concerned not only about the Tribunal's efforts to meet the expected level of delivery, but also that the Tribunal's completion strategy should not become an escape strategy for suspects not yet brought to justice. The idea of transferring cases from the Tribunal to Rwanda, as envisaged in the Tribunal's completion strategy, addresses our concerns. The Government of Rwanda considers the transfer of cases to Rwanda a key factor in ensuring that all major genocide suspects and perpetrators face justice, even after the completion of the Tribunal's mandate.

The Government of Rwanda is ready to receive all cases that will not have been completed at the end of the Tribunal's mandate. We therefore urge the Tribunal to expedite the process leading to an effective transfer of those cases.

Rwanda commends the efforts of the Tribunal in tracking fugitives. We also appreciate the commitment by some Member States to offer support and cooperation to the Tribunal by arresting and transferring the suspects to the seat of the Tribunal. We specifically commend the joint efforts between the Tribunal and the Governments of the Netherlands and South Africa in arresting and transferring Ephreim Setako and Ephreim Kanyarukiga, respectively.

However, we still note that there is a significant number of suspects whom the Tribunal has indicted, such as Felicien Kabuga, Ngirabatware and others, who remain, not only at large but in the territories of some Member States. We wish to note with dismay that some States have proved to be reluctant to cooperate with the Tribunal in arresting and handing over such fugitives to the Tribunal. We urge the Tribunal to exhibit greater transparency when reporting and discussing this matter. We particularly request the Tribunal always to inform, report and involve us in discussions on the level of cooperation received from Member States in dealing with this challenge. Though the majority of fugitives are in the Democratic Republic of the Congo, there are others who are in States other than the Democratic Republic of the Congo, and we have suggested that the Prosecutor, as a way of enhancing transparency in this matter, also name those other States that are harbouring fugitives.

My Government appreciates the support of the international community, which enabled it to construct a detention facility in Rwanda that meets international standards. We expect that convicts will now serve sentences in Rwanda, which will contribute to the process of reconciliation and healing, and eradicating the culture of impunity, as the people will now be able to make a direct link between crimes committed and punishments rendered, which has been missing for all this time.

We would also like to note that Rwanda will require support in training its investigators, lawyers and judges, as well as upgrading its court facilities and infrastructure, in order to handle these trials with the highest level of professionalism and efficiency. We shall require support from the international community in our bid to make our efforts a success. We welcome subsequent monitoring, but this will have to be preceded by initial capacity-building, and I wish to reiterate that Rwanda needs assistance in this area in the same way as the States in the Balkans need such assistance, and they are being assisted.

My delegation would like to bring to the attention of the Security Council the plight of many of the survivors of the 1994 genocide. They live in conditions of enormous hardship. To date, most genocide survivors, particularly the orphans, widows and victims of sexual violence, are suffering from abject poverty, HIV and limited access to education and medical care, to mention only a few problems. We urge the international community to recognize the seriousness of the problem and support the General Assembly draft resolution which is being tabled in the plenary of the General Assembly in this session.

Security of witnesses who testify before the Tribunal is another major concern of the Government of Rwanda. At least one prosecution witness was recently killed. Several others are reported to be living under threats. My Government continues investigations, arrest and prosecution of all those suspected of taking part in these heinous crimes. We have also invited the Tribunal, particularly the Registrar, to a cooperation review meeting. The meeting is expected to draw up a document on the policy and framework for cooperation in key areas, including witness protection. We have proposed to the Registrar that this meeting take place in the first week of December, and we expect a positive response from the Registrar.

Finally, Rwanda is very much committed to cooperation with, and support to, the Tribunal, and we

are happy that the President and the Prosecutor of the Tribunal are acknowledging the level of cooperation that we are extending to the Tribunal, and we pledge to continue extending cooperation to the extent we can. We also recognize the attention and support of the international community given to Rwanda in its bid to uphold justice and rebuild the country on the basis of unity, rule of law and reconciliation.

Through you, my delegation wishes to thank all members of the Security Council for their support to the Tribunal and to Rwanda.

The President: I now call on the representative of Bosnia and Herzegovina, whom I invite to take a seat at the Council table.

Mr. Kusljugić (Bosnia and Herzegovina): At the outset allow me to take this opportunity to thank the President of the International Criminal Tribunal for the Former Yugoslavia, Judge Theodor Meron, and Chief Prosecutor Carla Del Ponte for their annual report and their very clear and straightforward messages in regard to the Tribunal's current problems. Bosnia and Herzegovina once again reaffirms its support for the Tribunal and commends its entire staff for their efforts to prevent impunity and bring justice to the victims of genocide, war crimes and crimes against humanity, thus setting new milestones in international criminal justice.

In the eleven years of its existence, the Tribunal has established itself as an impartial, professional and competent institution. Its role has been twofold: on the one hand, its historical role has been to set the record straight and individualize the responsibility for some of the most gruesome crimes against humanity, thus relieving the participants in the conflict of collective guilt; on the other hand, its second role has been to be a pioneer in international criminal justice, paving a path for establishment of the International Criminal Court. Prevention of impunity has in the meantime become a widely accepted international principle, and investigations, processes and verdicts of both Tribunals have become an important part of international jurisprudence.

One hundred four accused war criminals have been brought before the Tribunal. Fifty-two of them have received Trial Chamber judgement; 30 have received their final sentence and 10 convicts have already served their sentences. It is not without regret that we learn from the President, Honourable Judge Meron, that international financial assistance to the tribunal is evidently drying out, and therefore, I would like, on behalf of my country, to reiterate the appeal to the main contributors to continue their support for the Tribunal for as long as it is necessary. On a more optimistic note, it is commendable that, in the elections held last week, 12 out of the 16 permanent judges at the International Criminal Tribunal for the Former Yugoslavia were re-elected to serve until November 2009. That will enable the Court to carry on with the same consistency it has shown in the past.

Bosnia and Herzegovina underlines in particular the role of the Tribunal in individualizing war crimes as a precondition for sustainable inter-ethnic reconciliation in the country and in the region as a whole. Notably, gestures made by indictees — who not only pleaded guilty but also expressed remorse to the victims — represent the cornerstone of the reconciliation process.

Bosnia and Herzegovina remains determined to continue meeting its obligations as regards cooperation with the ICTY. Our record with respect to the arrest and transfer of indictees still at large, requests for documents, access to archives and ready availability of witnesses has improved in the last year. Therefore, it is not without disappointment that we learn that the most recent activities of the authorities in Bosnia and Herzegovina, in particular those of Republika Srpska, are not recognized by the ICTY, since the Chief Prosecutor still reports that "there is no cooperation on the part of Republika Srpska".

On 11 October, the European Union took the decision to freeze all the assets and bank accounts of persons indicted by the ICTY. Just a few days later, the Government of Bosnia and Herzegovina followed suit and imposed the same measure. Furthermore, on 15 November, special forces of the Ministry of Interior of Republika Srpska arrested eight persons indicted for war crimes, genocide and crimes against humanity: Veselin Cancar, Goran Vasic, Svetko Novakovic, Jovan Skobo, Momir Glisic, Zeljko Mitrovic, Dragoje Radanovic and Momir Skakavac. Warrants for their arrest were issued by the cantonal court in Sarajevo following investigations conducted in collaboration with the ICTY, and the indictees were handed over into the Court's custody. The action was accompanied by a statement of the Minister of Interior of the Republika Srpska, who said, "This is the first action taken to improve Republika Srpska's cooperation with the

ICTY. Such actions will continue until Republika Srpska's cooperation with the ICTY is deemed satisfactory."

In spite of the evident progress achieved in cooperation with the Tribunal, many of the indicted war criminals have still not been apprehended; this creates a major obstacle to inter-ethnic reconciliation, since, for the country to come to terms with its tragic past and to move on, all indictees, especially the two most notorious, Radovan Karazdic and Ratko Mladic, must go to The Hague to face justice.

The absence of full cooperation with the ICTY is also the reason that Bosnia and Herzegovina was denied membership in the Partnership for Peace at the NATO Istanbul Summit held in June. Let me cite what NATO leaders said about this in their Istanbul communiqué:

> "We are concerned that Bosnia and Herzegovina, particularly obstructionist elements in the Republika Srpska entity, has failed to live up to its obligation to cooperate fully with [the] ICTY, including the arrest and transfer to the jurisdiction of the Tribunal of war crimes indictees, a fundamental requirement for the country to join the [Partnership for Peace]."

The European Union too also emphasizes that full cooperation by the countries of the western Balkans with the ICTY remains an essential element of the European Union Stabilization and Association Process, underlining that failure to cooperate fully with the ICTY would seriously jeopardize further movement towards the European Union.

Thus, it is clear that the failure to cooperate fully with the ICTY is now the main obstacle to Bosnia and Herzegovina becoming a stable, peaceful and prosperous European democracy.

Criminal files against some 5,908 persons have been submitted to the Prosecutor's Office for review, but only around 100 persons have been brought before the courts. Thus, hundreds — even thousands — of perpetrators of serious war crimes committed in Bosnia and Herzegovina have not even been charged. They include community members, outsiders who may have contributed to the outbreak of violence, and bystanders who did not participate in crimes but did not intervene to stop them either.

Based on its completion strategy, the ICTY intends to transfer to the domestic courts dossiers of unfinished investigations and investigative materials. It will then be up to the domestic judicial and prosecutorial authorities to act on those cases. That will start happening next year and will represent a serious test of the maturity of the domestic courts. It is also an important step in the building of institutions of justice in Bosnia and Herzegovina, which will contribute to significant progress in the creation of a society based on the rule of law and respect for human rights.

Bosnia and Herzegovina welcomes the cooperation of the ICTY and the Office of the High Representative in the process of the establishment of a special chamber for war crimes prosecutions in the State Court of Bosnia and Herzegovina and calls upon Member States to provide the technical and financial support necessary for its functioning. In that respect, it is very important to complete the process of staffing and budgeting for the special chamber for war crimes of the State Court of Bosnia and Herzegovina, bearing in mind the considerable workload that would be placed before it in the near future.

We also fully support the significant work being done by the Organization for Security and Cooperation in Europe (OSCE) mission in the region to promote rule of law, including by strengthening national judicial systems and supporting police reform. Monitoring domestic war crimes trials constitutes an essential contribution in that context. We welcome proposals for greater involvement of the OSCE in supporting the ICTY completion strategy.

The President: There are no further speakers on my list. The Security Council has thus concluded the present stage of its consideration of the item on the agenda.

The meeting rose at 2.20 p.m.